TEXAS REGISTER

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Maegan Reichert

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

ADOPTED RULES

RULE REVIEW

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for November 29, 2005

Appointed to the Texas State University System Board of Regents for a term to expire February 1, 2011, Ken Luce of Dallas. Mr. Luce is replacing Patricia Diaz Dennis of San Antonio whose term expired.

Appointed to the Texas State Library and Archives Commission for a term to expire September 28, 2011, Sharon T. Carr of El Paso. Ms. Carr is replacing Elizabeth Sanders of Arlington whose term expired.

Appointed to the Continuing Advisory Committee for Special Education, pursuant to Education Code §29.006, for a term to expire February 1, 2007, Christy Dees of Austin.

Appointed to the Continuing Advisory Committee for Special Education, pursuant to Education Code §29.006, for a term to expire February 1, 2007, Sherri Adair Hammack of Austin.

Appointments for December 1, 2005

Appointed to the Texas Medical Board for a term to expire April 13, 2009, Manuel G. Guajardo of Brownsville (replacing Dr. Lee Anderson who resigned).

Appointed to the Texas Affordable Housing Corporation for a term to expire February 1, 2009, Jesse A. Coffey of Denton (replacing Christopher DeCluitt of Waco who resigned).

Appointed to the Sabine River Authority of Texas for a term to expire July 6, 2011, Stanley N. Mathews of Orange (replacing Calvin Ebner whose term expired).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2011, Sharla Earl Hotchkiss of Midland (Ms. Hotchkiss is being reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2011, James N. Brookes of Amarillo (Mr. Brookes is being reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2011, Robert Hawkins of Bellmead (Mr. Hawkins is being reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2011, Carmen Olivas Graham of El Paso (replacing Mario Salinas of Edinburg whose term expired).

Rick Perry, Governor

TRD-200505574

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Proclamation 41-3036

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, nine proposed amendments to the Constitution of Texas were voted on in the Constitutional Amendment Election held on November 8, 2005; and

WHEREAS, on the 23rd day of November, 2005, I, Rick Perry, Governor of the State of Texas, did certify the tabulation prepared by the Secretary of State; and

WHEREAS, the tabulation and total of the votes cast for and against each proposed amendment established that the voters of the State of Texas adopted the following seven proposed amendments by a majority vote to wit:

PROPOSITION No. 1 as submitted by House Joint Resolution No. 54 creating the Texas rail relocation and improvement fund and authorizing grants of money and issuance of obligations for financing the relocation, rehabilitation, and expansion of rail facilities.

PROPOSITION No. 2 as submitted by House Joint Resolution No. 6 providing that marriage in this state consists only of the union of one man and one woman and prohibiting this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage.

PROPOSITION No. 3 as submitted by House Joint Resolution No. 80 clarifying that certain economic development programs do not constitute a debt.

PROPOSITION No. 4 as submitted by Senate Joint Resolution No. 17 authorizing the denial of bail to a criminal defendant who violates a condition of the defendant's release pending trial.

PROPOSITION No. 6 as submitted by House Joint Resolution No. 87 to include one additional public member and a constitutional county court judge in the membership of the State Commission on Judicial Conduct.

PROPOSITION No. 7 as submitted by Senate Joint Resolution No. 7 authorizing line-of-credit advances under a reverse mortgage.

PROPOSITION No. 8 as submitted by Senate Joint Resolution No. 40 providing for the clearing of land titles by relinquishing and releasing any state claim to sovereign ownership or title to interest in certain land in Upshur County and in Smith County.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 23rd day of November, 2005.

Rick Perry, Governor

Attested by: H. S. Buddy Garcia, Deputy Secretary of State

TRD-200505579

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Proclamation 41-3037

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the membership of the Texas House of Representatives in District No. 48 which consists of part of Travis County; and

WHEREAS, on November 22, 2005, the Texas Supreme Court issued its ruling in *Neeley v. West Orange-Cove Consolidated Independent School District, et al*, and extended the trial court's injunction against further financing Texas public schools to June 1, 2006; and

WHEREAS, the Legislature must be called into Special Session in order to address the Court's ruling prior to June 1, 2006; and

WHEREAS, the Texas uniform election dates law is intended to serve the interests of voters by allowing consolidation of elections onto a limited number of uniform dates, but the interests of voters of District No. 48 would be better served in this unique case by permitting an earlier election on a non-uniform date in order to be fully represented in the legislative process; and

WHEREAS, Section 203.002 of the Texas Election Code requires that a special election be ordered upon such vacancy and Section 203.004 of the Texas Election Code requires that if the election is to be held as an emergency election, it shall be held on a Tuesday or Saturday occurring on or after the 36th day and before the 50th day after the date the election is ordered; and

WHEREAS, the governor of Texas is granted the discretion under Section 41.0011, Election Code, to declare an emergency warranting holding a special election before the appropriate uniform election date; and

WHEREAS, Section 3.003 of the Texas Election Code, requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order an emergency special election to be held in District No. 48 on January 17, 2006, for the purpose of electing a State Representative for House District No. 48 to serve the term which began January 11, 2005.

Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Monday, December 19, 2005, and candidates who wish to file as a write-in candidate must file a declaration of write-in candidacy with the Secretary of State not later than 5:00 p.m. on Tuesday December 27, 2005.

Early voting by personal appearance shall begin on Monday, January 2, 2006, in accordance with Section 85.001 of the Texas Election Code.

A copy of this order shall be mailed immediately to the County Judge of Travis County; and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 48 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 29th day of November, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200505581

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Proclamation 41-3038

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, on November 29, 2005, I issued Proclamation No. 41-3037 calling a special election to be held on January 17, 2006, to fill a vacancy now existing in Texas House of Representatives District No. 48, previously held by the Honorable Todd Baxter; and

WHEREAS, an error in the drafting of that proclamation failed to note a change in the Election Code concerning the filing deadline for write-in candidates made during the last legislative session by House Bill No. 2309 by Denny relating to certain election processes and procedures;

NOW, THEREFORE, I, RICK PERRY, Governor of Texas, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby amend Proclamation No. 41-3037 by striking the ninth paragraph and replacing it with the following:

"Candidates who wish to have their names placed on the special election ballot must file their applications with the Secretary of State no later than 5:00 p.m. on Monday, December 19, 2005."

A copy of this order shall be mailed immediately to the County Judge of Travis County; and all appropriate writs will be issued and all proper proceedings will be followed for the purpose that said election may be held to fill the vacancy in District No. 48 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 30th day of November, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200505580

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THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0415-GA

Requestor:

Mr. William H. Kuntz Jr.

Executive Director

Texas Department of Licensing and Regulation

Post Office Box 12157

Austin, Texas 78711

Re: Sterilization requirements for certain cosmetology and barbering services (RQ-0415-GA)

Briefs requested by January 6, 2006

RQ-0416-GA

Requestor:

The Honorable David Swinford

Chair, Committee on State Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Validity under chapter 9, Local Government Code, of a charter provision that permits a home-rule city to amend its charter by ordinance (RQ-0416-GA)

Briefs requested by January 6, 2006

RQ-0417-GA

Requestor:

The Honorable Ken Armbrister

Chair, Committee on Natural Resources

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Authority of the El Paso Water Utilities Public Service Board to set an impact fee for new development in the City of El Paso and its extraterritorial jurisdiction (RQ-0417-GA)

Briefs requested by January 6, 2006

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200505620
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: December 7, 2005

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-530 The Texas Ethics Commission has been asked to consider the following questions: An individual who is a registered lobbyist under chapter 305 of the Government Code attends a political fundraiser golf tournament for a candidate or officeholder. The corporation makes expenditures (directly or by reimbursement to the lobbyist) for the lobbyist's transportation, lodging, food and beverages, entry fees, and other expenditures related to the event. The registered lobbyist attends the event while on corporate time. 1. Are the corporate expenditures listed above permissible under chapter 305 of the Government Code if the expenditures are made with the intent to influence legislation or to generate or maintain goodwill for the purpose of influencing potential future legislation, or are the expenditures a prohibited illegal corporate contribution or expenditure under title 15 of the Election Code? 2. Are the corporate expenditures listed above permissible under chapter 305 of the Government Code if a corporate employee makes the expenditures on corporate time?

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200505614
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: December 6, 2005

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §19.161

The Texas Department of Agriculture (the department) adopts on an emergency basis amendments to §19.161 in order to expand the quarantined area for the Diaprepes root weevil, *Diaprepes abbreviatus* (L). Due to the detection of Diaprepes root weevils in 2001 in an orange grove located 0.2 miles West of the intersection of Hobbs Drive and North 2nd Street in McAllen, Texas, the department quarantined the grove and the area within 300-yards surrounding the grove to facilitate eradication of this pest. As a part of this effort, Tedder traps are deployed in both the quarantined area and the area adjacent to the quarantined area, and monitored weekly. Of the 269 traps currently in use, 124 are deployed outside the quarantined area. Seventeen adults of Diaprepes were detected outside the quarantined area, a majority in August - November of 2005. Of the 17 adults, nine were detected in and around the Timberhill Mobile Park and 8 in and around Plaza del Lagos. The amended section is adopted on an emergency basis to prevent further spread of the Diaprepes root weevil and facilitate its eradication.

The department believes that it is necessary to take this immediate action to prevent the spread of the Diaprepes root weevil into other citrus and nursery growing areas of Texas, and that the adoption of this amended section on an emergency basis is both necessary and appropriate. There is an imminent peril to the citrus and nursery industries because without this emergency amendment and treatment of the infestation, other states will most likely quarantine Texas. As a result, Texas could lose important export markets and would require regulatory treatments to export citrus plants and nursery stocks, resulting in increased production costs to producers. In addition, citrus producers will be faced with the added control cost and the losses caused by this pest. The amended section enhances chances for a successful eradication since it prevents artificial spread of the quarantined pest and provides for its elimination, thus protecting the industry.

Amended §19.161 expands the quarantined area in correspondence with the detection of the Diaprepes root weevils outside the current quarantined area. The department may propose adoption of this rule amendment on a permanent basis in a separate submission.

The amended section is adopted on an emergency basis under the Texas Agriculture Code, §71.004, which provides the Texas Department of Agriculture with the authority to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.161. Quarantined Areas.

The quarantined areas are:

(1) Within Texas:

(A) the citrus grove located in Hidalgo County, McAllen, Texas, 0.20 miles West of the intersection of Hobbs Drive and North 2nd Street and the area within approximately 300[-]yards surrounding the grove in all directions; the property located at 9601 N. 10th Street, Unit 1-11, Hidalgo County, McAllen, Texas and the surrounding area within approximately 300 yards in all directions, including the citrus grove, comprised of approximately 20 acres, located south of the Timberhill Mobile Park; and the property located at 3539 Plaza del Lagos, Hidaldo County, Edinburg, Texas and the surrounding area within approximately 300-yards in all directions; and

(B) any other area where the quarantined pest is detected.

(C) The map of the quarantined area may be obtained from the Valley Regional Office, 900-B, East Expressway, San Juan, Texas 78589.

(2) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 2, 2005.

TRD-200505573
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective Date: December 2, 2005
Expiration Date: March 31, 2006
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.7

The Public Utility Commission of Texas (commission) adopts, on an emergency basis, new §25.7, relating to Relief for Victims of Hurricanes Katrina and Rita. The new rule prevents retail electric providers and electric utilities from requiring a deposit as a condition of service when providing electric service to an applicant for residential service who is or was an evacuee due to Hurricanes Katrina and Rita. The rule also establishes the methods by which an applicant may demonstrate entitlement to the protection of the rule and prevents disconnection of service on the basis of a failure to pay a deposit. This emergency rule is effective immediately upon filing with the Secretary of State and will be in effect for 60 days.

On October 3, 2005, the commission adopted, on an emergency basis, a version of §25.7 that was to expire on December 2, 2005. The recent destruction of large areas of the U.S. Gulf Coast by Hurricanes Katrina and Rita has caused tens of thousands of displaced residents to be evacuated both within Texas and from other states to Texas. The Federal Emergency Management Agency (FEMA) initially registered over 147,000 heads of households as being relocated to Texas. In response to these emergencies, Governor Perry issued disaster proclamations certifying that Hurricanes Katrina and Rita had created emergency conditions for the people of Texas and directing that all rules and regulations that might inhibit or prevent prompt response to the emergency conditions were suspended for the duration of the incident.

A potential hurdle for evacuees trying to transition from shelters to more permanent housing will be the need to provide deposits for utility services. Under the commission's current rules, an applicant for electric service can avoid paying a deposit by demonstrating satisfactory credit using various methods of proof. For many of the evacuees, the hurricanes have destroyed their personal records and they will not be able to provide the information necessary to demonstrate their satisfactory credit. If satisfactory credit cannot be established, the commission's rules allow an electric service provider to require a deposit for residential electric service not to exceed an amount equal to one-fifth of the customer's annual billings or the sum of the estimated billings for the next two months. Many evacuees who might otherwise have had the means to pay a deposit likely have become unemployed because of damage to the businesses at which they worked or have been cut off from bank accounts and other financial resources. Many of those on fixed incomes likely have been temporarily cut off from retirement and other benefits such as Social Security and Veteran's benefits. Finally, many of the evacuees are low-income and simply do not have the financial means to pay a service deposit now that they are homeless and unemployed.

To address this concern, the commission adopted an emergency rule on October 3, 2005, to establish alternative methods by which evacuees could satisfy credit requirements of electric utilities and retail electric providers without having to provide a deposit. The rule was to be effective until December 2, 2005, with the anticipation that most of the displaced families would be relocated by that time.

On November 22, 2005, FEMA announced that more than 50,000 evacuee families were still living in hotel rooms in ten states, including Texas, after having evacuated from the areas struck by the hurricanes. Because of this continuing need for housing assistance, FEMA announced that it was extending the deadline for termination of its program to provide hotel housing for Hurricane evacuees until as late as January 7, 2006. In response to FEMA's announcement, the commission finds that the imminent peril to the public welfare that necessitated the original adoption of §25.7 continues to exist. Accordingly, the commission is withdrawing the previous version of §25.7 and simultaneously adopting a replacement emergency rule to extend the provisions of §25.7 for an additional 60 days. It is the intent of the commission that this emergency rule be effective for a period of 60 days, from December 1, 2005, the date of adoption and of filing with the Office of the Secretary of State, through January 29, 2006.

The commission adopts new §25.7 on an emergency basis pursuant to Texas Government Code, §2001.034, which authorizes a state agency to adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice, and states in writing the reasons for its findings. The new section is adopted under PURA §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §36.001, which authorizes the commission to establish just and reasonable rates of an electric utility and adopt rules for determining the applicability of rates, and PURA §39.101(e), which authorizes the commission to adopt and enforce rules for minimum service standards for a retail electric provider relating to customer deposits, the extension of credit, and termination of service.

Cross Reference to Statutes: Texas Government Code, §2001.034 and §2001.036, and Public Utility Regulatory Act §§14.002, 36.001 and 39.101.

§25.7. Relief for Victims of Hurricanes Katrina and Rita.

(a) Application. This rule establishes special deposit limitations applicable to an applicant for residential electric utility service who resided within federally declared disaster areas in Texas, Louisiana, Mississippi, or Alabama, and who has been determined to be an evacuee from an area damaged by Hurricane Katrina or Hurricane Rita as evidenced by proof of:

(1) prior residency within one of these affected areas during or immediately prior to the hurricanes;

(2) application for or receipt of disaster assistance from the Federal Emergency Management Agency (FEMA); the American Red Cross or other recognized, legitimate private relief agency; or a state or local jurisdiction or other public aid agency related to damages suffered in one of these affected areas; or

(3) residing or having resided in a designated emergency shelter within Texas.

(b) Evidence of qualification. In determining whether an applicant qualifies for purposes of establishing satisfactory credit, a retail electric provider or an electric utility shall accept:

(1) the applicant's valid Texas driver's license listing a residence within an affected Texas county; or

(2) the applicant's valid driver's license listing a residence within an affected county in Alabama, Louisiana, or Mississippi; or

(3) any documentation submitted by the applicant from a federal, state, or local government assistance agency or the American Red Cross or another recognized, legitimate private relief agency that substantiates one of the conditions listed in subsection (a) of this section.

(c) Deposits for qualified applicants. Provisions to the contrary in this chapter and in tariffs subject to commission jurisdiction notwithstanding, each retail electric provider and each electric utility shall:

(1) notify all applicants for residential service about this provision; and

(2) waive any requirement that an applicant or customer make or pay any deposit for residential electric utility service if the applicant or customer meets the standards and requirements set forth in subsections (a) and (b) of this section.

(d) Disconnection. No retail electric provider or electric utility may disconnect a residential customer for failure to pay a deposit if the customer meets the standards and requirements set forth in subsections (a) and (b) of this section.

(e) Expiration. This rule expires on January 29, 2006.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 1, 2005.

TRD-200505568
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective Date: December 1, 2005
For further information, please call: (512) 936-7223

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.8

The Public Utility Commission of Texas (commission) adopts, on an emergency basis, new §26.8, relating to Relief for Victims of Hurricanes Katrina and Rita. The new rule prevents certificated telecommunications utilities (CTUs) from requiring a deposit as a condition of service when providing basic local telecommunications services to an applicant for residential service who is or was an evacuee due to Hurricanes Katrina or Rita. The rule also establishes the methods by which an applicant may demonstrate entitlement to the protection of the rule and prevents disconnection of service on the basis of a failure to pay a deposit. This emergency rule is effective immediately upon filing with the Secretary of State and will be in effect for 60 days.

On October 3, 2005, the commission adopted, on an emergency basis, a version of §26.8 that was to expire on December 2, 2005. The recent destruction of large areas of the U.S. Gulf Coast by Hurricanes Katrina and Rita has caused tens of thousands of displaced residents to be evacuated both within Texas and from other states to Texas. The Federal Emergency Management Agency (FEMA) initially registered over 147,000 heads of households as being relocated to Texas. In response to these emergencies, Governor Perry issued disaster proclamations certifying that Hurricanes Katrina and Rita had created emergency conditions for the people of Texas and directing that all rules and regulations that might inhibit or prevent prompt response to the emergency conditions were suspended for the duration of the incident.

A potential hurdle for evacuees trying to transition from shelters to more permanent housing will be the need to provide deposits for utility services. Under the commission's current rules, an applicant for basic local telecommunications service can avoid paying a deposit by demonstrating satisfactory credit using various methods of proof. For many of the evacuees, the hurricanes have destroyed their personal records and they will not be able to provide the information necessary to demonstrate their satisfactory credit. The commission's rules allow a CTU to require a deposit for residential basic local telecommunications service not to exceed an amount equivalent to one-sixth of the estimated annual billing, except as provided in P.U.C. Substantive Rule §26.29 (relating to Prepaid Local Telephone Service). Many evacuees who might otherwise have had the means to pay a deposit likely have become unemployed because of damage to the businesses at which they worked or have been cut off from bank accounts and other financial resources. Many of those on fixed incomes likely have been temporarily cut off from retirement and other benefits such as Social Security and Veteran's benefits. Finally, many of the evacuees are low-income and simply do not have the financial means to pay a service deposit now that they are homeless and unemployed.

To address this concern, the commission adopted an emergency rule on October 3, 2005, to establish alternative methods by which evacuees could satisfy credit requirements CTUs without having to provide a deposit. The rule was to be effective until December 2, 2005, with the anticipation that most of the displaced families would be relocated by that time.

On November 22, 2005, FEMA announced that more than 50,000 evacuee families were still living in hotel rooms in ten states, including Texas, after having evacuated from the areas struck by the hurricanes. Because of this continuing need for housing assistance, FEMA announced that it was extending the deadline for termination of its program to provide hotel housing for Hurricane evacuees until as late as January 7, 2006. In response to FEMA's announcement, the commission finds that the imminent peril to the public welfare that necessitated the original adoption of §26.8 continues to exist. Accordingly, the commission is withdrawing the previous version of §26.8 and simultaneously adopting a replacement emergency rule to extend the provisions of §26.8 for an additional 60 days. It is the intent of the commission that this emergency rule be effective for a period of 60 days, from December 1, 2005, the date of adoption and of filing with the Office of the Secretary of State, through January 29, 2006.

The commission adopts new §26.8 on an emergency basis pursuant to Texas Government Code, §2001.034, which authorizes a state agency to adopt an emergency rule without prior notice

or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice, and states in writing the reasons for its findings. The new section is adopted under PURA §14.002, which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, PURA §51.001, which authorizes the commission to make and enforce rules necessary to protect customers of telecommunications services consistent with the public interest, and PURA §64.004(b), which authorizes the commission to adopt and enforce rules to provide certain customer protections, including rules for minimum service standards for CTUs relating to customer deposits, extension of credit, and termination of service.

Cross Reference to Statutes: Texas Government Code, §2001.034 and §2001.036, and Public Utility Regulatory Act §§14.002, 51.001 and 64.004.

§26.8. Relief for Victims of Hurricanes Katrina and Rita.

(a) Application. This rule establishes special deposit limitations applicable to an applicant for residential basic local telecommunications service who resided within federally declared disaster areas in Texas, Louisiana, Mississippi, or Alabama, and who has been determined to be an evacuee from an area damaged by Hurricane Katrina or Hurricane Rita as evidenced by proof of:

(1) prior residency within one of these affected areas during or immediately prior to the hurricanes;

(2) application for or receipt of disaster assistance from the Federal Emergency Management Agency (FEMA); the American Red Cross or other recognized, legitimate private relief agency; or a state or local jurisdiction or other public aid agency related to damages suffered in one of these affected areas; or

(3) residing or having resided in a designated emergency shelter within Texas.

(b) Evidence of qualification. In determining whether an applicant qualifies for purposes of establishing satisfactory credit, a certificated telecommunications utility shall accept:

(1) the applicant's valid Texas driver's license listing a residence within an affected Texas county; or

(2) the applicant's valid driver's license listing a residence within an affected county in Alabama, Louisiana, or Mississippi; or

(3) any documentation submitted by the applicant from a federal, state, or local government assistance agency or the American Red Cross or another recognized, legitimate private relief agency that substantiates one of the conditions listed in subsection (a) of this section.

(c) Deposits for qualified applicants. Provisions to the contrary in this chapter and in tariffs subject to commission jurisdiction notwithstanding, each certificated telecommunications utility shall:

(1) notify all applicants for residential service about this provision; and

(2) waive any requirement that an applicant or customer make or pay any deposit for residential basic local telecommunications service if the applicant or customer meets the standards and requirements set forth in subsections (a) and (b) of this section.

(d) Disconnection. No certificated telecommunications utility may disconnect a residential customer for failure to pay a deposit if the customer meets the standards and requirements set forth in subsections (a) and (b) of this section.

(e) Expiration. This rule expires on January 29, 2006.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 1, 2005.

TRD-200505567
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective Date: December 1, 2005
For further information, please call: (512) 936-7223

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §31.14

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts on an emergency basis amended §31.14, relating to one-half time employment. The amended section is proposed for permanent adoption elsewhere in this same issue of the *Texas Register*.

Section 31.14 establishes the maximum number of hours a retiree employed under the one-half time exception may work without forfeiting an annuity. Texas Governor Rick Perry proclaimed that Hurricane Rita posed a threat of imminent disaster along the Texas Coast beginning September 20, 2005 and, under §418.016, Government Code, suspended all rules and regulations that might inhibit or prevent prompt response to this threat for the duration of the incident. Pursuant to the disaster proclamation the governor's office requested emergency relief from §31.14 for TRS retirees who were needed to work in TRS-covered health care facilities in excess of one-half time to respond to the emergency disaster conditions but who were concerned about losing their annuities if they worked the additional hours. In renewing his declaration of an emergency disaster and emergency conditions caused by Hurricane Rita on October 20, 2005, the governor again directed that all necessary measures be implemented to meet the disaster and suspended all rules and regulations that might inhibit or prevent prompt response to the threat. TRS has responded appropriately to the governor's request for emergency relief and to the emergency disaster and conditions proclamations, which have the force and effect of state law. In amending §31.14 on an emergency basis, the Board ratifies the actions TRS staff took regarding one-half time employment for retirees in response to the governor's disaster proclamations for Hurricane Rita and clarifies as well as documents the nature and scope of such response. Thus, for retirees working in health care facilities during the months of September, October, and November 2005 in response to

emergency conditions declared by the governor for Hurricane Rita, amended §31.14 grants a necessary and appropriately limited exception to the maximum number of hours a one-half time employee may work in a calendar month. Amended §31.14 also provides clear and consistent guidance to TRS reporting entities regarding TRS's response to the governor's disaster proclamations and emergency relief request.

Statutory Authority: §2001.034, Government Code, which allows the Board to adopt the amended rule on an emergency basis, without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable; Tex. Gov. Proclamation No. 41-3023 (signed Sept. 20, 2005), 30 TexReg 6330 (2005), Governor Perry's initial disaster proclamation regarding Hurricane Rita, and Tex. Gov. Proclamation No. 41-3027 (signed Oct. 20, 2005), 30 TexReg 7799 (2005), the governor's renewal of the disaster proclamation for Hurricane Rita, both of which require adoption of amended rule §31.14 on an emergency basis with fewer than 30 days' notice so that TRS may provide clear and consistent guidance to affected retirees and reporting entities regarding the limited exception being granted to the one-half time employment provisions in response to the governor's proclamations and emergency relief request; §418.012, Government Code, which provides that the above-referenced gubernatorial proclamations have the force and effect of state law; §824.601, Government Code, which authorizes the Board to adopt rules necessary to administer Chapter 824, Subchapter G, Government Code, relating to loss of benefits on resumption of service; and §824.602(j), Government Code, relating to exceptions to loss of benefits on resumption of service and which requires the Board to adopt rules defining "one-half time basis."

Cross-reference to Statute: Chapter 824, Subchapter G, Government Code, relating to loss of benefits on resumption of service.

§31.14. One-half Time Employment.

(a) A person who is receiving a service retirement annuity may be employed on a one-half time basis without forfeiting annuity payments for the months of employment. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) Except as provided in subsection (e) of this section, one-half [~~One-half~~] time employment measured in clock hours shall not in any month exceed one-half of the time required for a full time position in a calendar month or 92 clock hours, whichever is less. Because the time required for a full time position may vary from month to month, determination of one-half time will be made on a calendar month basis. Actual course instruction in state-supported colleges (including junior colleges), universities, and public schools shall not exceed during any calendar month one-half the normal load for full-time employment at the same teaching level.

(c) For bus drivers, "one-half time" employment shall in no case exceed 12 days in any calendar month, unless the retiree qualifies for the bus driver exception in §31.18 of this chapter (relating to Bus Driver Exception). Work by a bus driver for any part of a day shall count as a full day for purposes of this section.

(d) This exception and the exception for substitute service may be used during the same school year provided the substitute service and one-half time employment do not occur in the same month. Effective September 1, 2003, this exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis.

(e) For the 2005-2006 school year only, retirees who retired prior to September 1, 2005 and work in one-half time positions will not forfeit their annuities under this section for working additional hours during the months of September, October, and November 2005 if:

(1) the work was as a result of emergency conditions due to Hurricane Rita as declared by the Governor of Texas; and

(2) the retiree was working in a health care facility.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 1, 2005.

TRD-200505562
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Effective Date: December 1, 2005
For further information, please call: (512) 542-6438

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.106

The Alcoholic Beverage Commission proposes amendments to §45.106, governing the award of prizes to consumers by members of the manufacturing and wholesale tiers through sweepstakes. These amendments are proposed in order to bring the rule into compliance with Senate Bill 1471, adopted by the 79th Legislature, which amended §102.07 and §108.061 of the Alcoholic Beverage Code, removing the requirement that such sweepstakes be simultaneously conducted in thirty or more states.

Lou Bright, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal impact on units of state or local government. Similarly, there are no anticipated fiscal implications for individuals or small businesses.

Mr. Bright has also determined that the public will benefit from the proposed amendments because such amendments will harmonize the provisions of statutory and regulatory law.

Comments on the proposed amendments may be submitted to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

The amendments are proposed under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish such rules as are necessary to carry out the provisions of the code.

Cross Reference to Statute: Section 102.07 and §108.061 of the Alcoholic Beverage Code are affected by the amendments.

§45.106. Sweepstakes and Games of Chance.

(a) This rule relates to §102.07 and §108.061 of the Alcoholic Beverage Code.

(b) For purposes of the above referenced provisions of the Alcoholic Beverage Code, sweepstakes shall include prizes that are awarded to consumers on the basis of random chance or on the basis of some knowledge or skill demonstrated by the sweepstakes participant, as determined by a judge or judges selected by the sponsor for that purpose.

(c) Members of the manufacturer and wholesaler tier (except holders of a distributor's license) [~~The holder of the following licenses and permits~~] may offer a prize to a consumer if the offer is part of a [~~nationally conducted~~] promotional sweepstakes activity. [~~legally offered and simultaneously conducted during the same time period in 30 or more states:~~]

[~~(1) manufacturer's license;~~]

[~~(2) non-resident manufacturer's license;~~]

[~~(3) brewer's permit;~~]

[~~(4) non-resident brewer's permit;~~]

[~~(5) distiller's and rectifier's permit;~~]

[~~(6) winery permit;~~]

[~~(7) wine bottler's permit; or~~]

[~~(8) non-resident seller's permit.~~]

(d) A promotional permit holder contracted by the holder of a manufacturer's or wholesaler's permit may sponsor a sweepstakes on behalf of the manufacturer or wholesaler. [~~Any sweepstakes promotion must be legally offered and simultaneously conducted during the same time period in 30 or more states.~~]

(e) A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

(f) Alcohol may not be awarded as a prize.

(g) [~~(f)~~] A person must be 21 years of age or older to enter a sweepstakes promotion.

[~~(g) No game piece, or other form of instant win device may be packaged with, within, or printed on any packages of alcoholic beverages. All sweepstakes entries are prohibited from requiring a purchase of an alcoholic beverage or the validation of any kind which requires a purchase of any alcoholic beverage.~~]

(h) An upper tier sponsored sweepstakes entry or contest may not be retailer specific and prizes may not be awarded on a retailer's premise. [~~No sweepstakes entry may be packaged with, within, or printed on any packages of alcoholic beverages unless there is provided at the point of sale identical entries available to the consumer. All sweepstakes entries are prohibited from requiring a purchase of an alcoholic beverage or the validation of any kind which requires a purchase of any alcoholic beverages.~~]

(i) Entry codes or entry forms on or in the caps, corks, labels, case cartons, or other materials packaged with, within, or printed on any packages of alcoholic beverages may be used as an entry mechanism provided:

(1) such mechanisms do not grant a consumer's right to claim winnings; and

(2) there is at the point of sale conspicuously displayed alternate methods of entry available to the consumer.

(j) All sweepstakes entries are prohibited from requiring a purchase of an alcoholic beverage or the validation of any kind which requires a purchase of any alcoholic beverages.

(k) [~~(i)~~] Except as specifically authorized by this section, and the Alcoholic Beverage Code, §102.07 and §108.061, it shall be unlawful for any person to sell or distribute any alcoholic beverage in a container bearing any label, crown, or covering upon which there is printed or marked any word, letter, figure, symbol or character representative of or suggesting any game of chance, or to use or display any advertising so printed or marked.

(l) [~~(j)~~] Any sweepstakes promotion that includes prizes that are to be awarded on the basis of some knowledge or skill demonstrated by the sweepstakes participant may not be held or conducted on the licensed premises of a retailer or private club. Sweepstakes sponsors may, with the retailer's permission, place sweepstakes entry forms on retail premises.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505519
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 206-3204

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 82. BARBERS

16 TAC §§82.50 - 82.54

The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code, §§82.50 - 82.54, concerning barbers.

The new rules are necessary to implement acts of the 79th Texas Legislature, Senate Bill 411, which transferred the functions of the Texas State Board of Barber Examiners ("Board") to the Texas Department of Licensing and Regulation effective September 1, 2005 and abolished the Board. In particular these new rules implement Texas Occupations Code, §1603.103, as added by Senate Bill 411, concerning inspections of barber facilities before operation, and §1603.104, as added by Senate Bill 411, concerning periodic and risk-based inspections of barber facilities. The Department intends to propose in a separate rulemaking action amendments to rules at 16 Texas Administrative Code, Chapter 82 to add a definition of "barber establishment" and to set fees for risk-based inspections. The term "barber establishment," which is used throughout these proposed new rules, will mean a barbershop, manicurist specialty shop, or school, licensed under Texas Occupations Code, Chapters 1601 and 1603.

New §82.50 applies to inspections generally. The section sets out the manner in which inspections will be conducted, to provide for an orderly and efficient inspection process. Barber establishments are to be inspected periodically, according to a risk-based schedule, or as a result of a complaint. Inspections will be performed to determine compliance with statutory and rule requirements for barber establishments. Inspections are to be performed during normal operating hours of the barber establishments. A Department inspector will contact the establishment owner, manager, or their representative upon arrival. The rule also requires that the establishment owner, manager, or their representative cooperate with the inspector in the performance of the inspection.

New §82.51 concerns initial inspections of barber establishments before operation of the establishment. Subsection (a) provides that any new or relocated barber establishment must be inspected and approved by the Department before it may operate. This provision implements Texas Occupations Code, §1603.103, which stipulates that a person may not operate a barber establishment until the establishment has been inspected and approved by the Department. Subsection (a) also requires that a barber school that has changed ownership must be inspected and approved by the Department, but the school may continue to operate prior to inspection. The new rule describes the procedure for the requesting and scheduling of inspections. The rule further provides that the owner of the establishment will be advised in writing of the results of the inspection, including whether the establishment meets minimum statutory and rule requirements. An establishment that does not meet the minimum requirements must be reinspected, and the rule describes the procedure for requesting a reinspection.

New §82.52 concerns periodic inspections of barber establishments. In accordance with Texas Occupations Code, §1603.104(b), inspections of shops are to be conducted at least every two years. Inspections of barber schools will be conducted on a risk-based schedule prescribed by proposed new §82.53. Section 82.52 requires that the shop owner, manager, or representative make available to the inspector the list required by §82.71(c) of all individuals who work in the shop. The rule provides that the shop owner will be advised in writing of the results of the inspection and whether the inspection was approved or not approved. The inspection report will indicate corrective modifications that must be made by the owner. The rule clarifies that the Department may also assess administrative penalties and administrative sanctions for violations that are found in an inspection. Subsection (e) states that as a result of a periodic inspection, an establishment may be moved to a risk-based schedule of inspections, and the establishment will be notified accordingly.

New §82.53 establishes a risk-based schedule of inspections and criteria to determine the frequency of inspections, in accordance with Texas Occupations Code, §1603.104(c). The owner of a barber establishment must pay a fee for each risk-based inspection. This rulemaking does not include the amount of the fee for these inspections, but the Department anticipates that as part of a separate rulemaking the fee will be set at $150 per inspection. The rule establishes three tiers of risk-based inspections. Tier 1 requires inspection once each year; Tier 2 requires inspection twice each year; and Tier 3 requires inspection four times each year. In general, an establishment will fall into one of these tiers based on the type and seriousness of violations found in that establishment and whether violations are repeated. Barber schools, because of the nature of the services they offer, are

always on a risk-based inspection schedule. Schools are initially classified as Tier 1 but may be moved into a higher tier based on the school's history of violations. A shop owner, manager, or representative must make available to the inspector the list required by §82.71(c) of all individuals who work in the shop. The rule provides that the establishment owner will be advised in writing of the results of the inspection and whether the inspection was approved or not approved. The inspection report will indicate corrective modifications that must be made. The rule clarifies that the Department may also assess administrative penalties and administrative sanctions for violations that are found in an inspection. Subsection (f) describes the conditions under which a shop may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. Subsection (g) describes the conditions under which a school subject to a Tier 2 or Tier 3 schedule may be moved to a less frequent risk-based inspection schedule.

New §82.54 concerns corrective modifications required following an inspection. The Department will provide the establishment owner a list of corrective modifications and a deadline for completing modifications. The Department may grant an extension of time to complete modifications if satisfactory evidence is presented showing that the time period specified is inadequate. The rule also clarifies that further action may be warranted for certain violations, including administrative penalties and administrative sanctions.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rules are in effect there will be some additional costs to the Department in performing additional inspections. By focusing inspection activities on establishments that pose the greatest risk to public health and safety, the Department believes that it will be making the most effective and efficient use of its resources. The Department anticipates that additional revenue will be generated from new risk-based inspection fees, which are to be proposed in a separate rulemaking. The amount of the fee for each risk based inspection is anticipated to be $150, and the Department anticipates that the fee revenue will cover the cost of performing the inspections. There will be no cost to local government as a result of enforcing or administering the new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be greater protection of public health and safety. The risk-based inspection schedule will enable the Department to focus its resources on the establishments that pose the greatest risk to the public. In addition, the proposed rules clarify that an inspection is required if an establishment relocates or if a school changes ownership, which should serve to promote public health and safety.

Mr. Kuntz has determined that there will be some additional costs to persons who are required to comply with the proposed rules, including small or micro-businesses. Some establishments will be required to obtain more frequent inspections, based on a risk-based schedule, and pay a fee for each risk-based inspection. Those establishments may be small or micro-businesses. The fee for each risk based inspection, although not set in this rulemaking, is anticipated to be $150. Because the rules clarify that an inspection is required if an establishment relocates or if a school changes ownership, some establishments may incur additional cost because of fees for these inspections. These establishments may include small or micro-businesses. The department anticipates that the fee for such inspections will be the same as for an initial inspection.

Comments on the proposal may be submitted to Tamala Fletcher, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: tamala.fletcher@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapters 51, 1601, and 1603, which authorize the Department to adopt rules as necessary to implement these chapters. In particular, the proposed new rules implement acts of the 79th Texas Legislature, Senate Bill 411.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the proposal.

§82.50. Inspections--General.

(a) Barber establishments shall be inspected periodically, according to a risk-based schedule, or as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and this chapter, particularly those requirements relating to public safety, licensing, and sanitation. In addition, the department will make information available to barber establishment owners and managers on best practices for risk-reduction techniques.

(b) Inspections shall be performed during the normal operating hours of the barber establishments.

(c) The department inspector will contact the barber establishment owner, manager, or their representative upon arrival at the barber establishment, and before proceeding with the inspection.

(d) The barber establishment owner, manager, or their representative shall cooperate with the inspector in the performance of the inspection.

§82.51. Initial Inspections--Inspection of Barber Establishments Before Operation.

(a) Any new or relocated barber establishment must be inspected and approved by the department before it may operate. Additionally, a barber school that has changed ownership must be inspected and approved by the department, but may continue to operate prior to inspection.

(b) The barber establishment owner shall request an inspection from the department and pay the permit fee required by §82.80. In order for the department to schedule the inspection in a timely manner, the inspection request and fee should be submitted to the department no later than forty five (45) calendar days prior to the opening date of the establishment.

(c) Upon receipt of the owner's request and the permit fee, the department shall schedule the inspection date and notify the owner.

(d) Upon completion of the inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the barber establishment meets or does not meet the minimum requirements of the Act and this chapter.

(e) For barber establishments that do not meet the minimum requirements, the report will reflect those minimum requirements that remain to be addressed by the owner.

(f) A barber establishment that does not meet the minimum requirements on initial inspection must be reinspected. The barber establishment owner must submit the request for reinspection along with

the fee required by §82.80, before the department will perform the reinspection.

§82.52. Periodic Inspections.

(a) Each barbershop and manicurist specialty shop shall be inspected at least once every two years.

(b) The barbershop or manicurist specialty shop owner, manager, or their representative must, upon request, make available to the inspector the list required by §82.71(c) of all individuals who work in the shop.

(c) Upon completion of the inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(d) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective modifications required to address the violations, in accordance with §82.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for certain violations, in accordance with §82.90.

(e) Based on the results of the periodic inspection, a barber establishment may be moved to a risk-based schedule of inspections. The department will notify the owner of a barber establishment, in writing, if the establishment becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.

§82.53 Risk-Based Inspections.

(a) Risk-based inspections are those required in addition to periodic inspections required under §82.52, for barber establishments determined by the department to be a greater risk to public health or safety. In order to determine which establishments will be subject to risk-based inspections, the department has established criteria and frequencies for risk-based inspections. The owner of the barber establishment shall pay the fee required under §82.80 for each inspection performed under this subsection, in a manner established by the department.

(b) Barber establishments subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:
Figure: 16 TAC §82.53(b)

(c) The barbershop or manicurist specialty shop owner, manager, or their representative must, upon request, make available to the inspector, the list required by §82.71(c) of all individuals who work in the shop.

(d) Upon completion of the inspection, the owner of the barber establishment shall be advised in writing of the results. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(e) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner of the barber establishment. The report will also indicate the corrective modifications required to address the violations, in accordance with §82.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for certain violations, in accordance with §82.90.

(f) Barbershops and manicurist specialty shops on a risk-based inspection schedule that have no violations of sanitation or licensing requirements in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the owner of the shop, in writing, if there is a change in the shop's risk-based schedule or if the shop is returned to a periodic inspection schedule.

(g) Barber schools subject to the Tier 2 or Tier 3 schedule, that have no violations of sanitation or licensing requirements in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule. The department will notify the owner of the barber school, in writing, if there is a change in the school's risk-based schedule.

§82.54. Corrective Modifications Following Inspection.

(a) When corrective modifications to achieve compliance are required, the department:

(1) shall provide the owner a list of required corrective modification(s) and a deadline for completing modifications; and

(2) may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) When corrective modifications to achieve compliance involve violations of certain sanitation rules or violations relating to unlicensed practice, those violations may be referred to the department's enforcement division for further action. The barber establishment will be contacted by the department to arrange final resolution of these violations. Additionally, the department may assess administrative penalties and/or administrative sanctions for certain violations, in accordance with §82.90.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 5, 2005.

TRD-200505600
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 463-6208

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CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.50 - 83.54

The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code, §§83.50 - 83.54, concerning cosmetologists.

The new rules are necessary to implement acts of the 79th Texas Legislature, Senate Bill 411, which transferred the functions of the Texas Cosmetology Commission to the Texas Department of Licensing and Regulation effective September 1, 2005 and abolished the Texas Cosmetology Commission. In particular these new rules implement Texas Occupations Code, §1603.103, as added by Senate Bill 411, concerning inspections of cosmetology facilities before operation, and §1603.104, as added by Senate Bill 411, concerning periodic and risk-based inspections of cosmetology facilities. The Department intends to propose in a separate rulemaking action amendments to rules at 16 Texas Administrative Code, Chapter 83 to set fees for risk-based inspections.

New §83.50 applies to inspections generally. The section sets out the manner in which inspections will be conducted, to provide for an orderly and efficient inspection process. Cosmetology establishments are to be inspected periodically, according to a risk-based schedule, or as a result of a complaint. Inspections will be performed to determine compliance with statutory and rule requirements for cosmetology establishments. Inspections are to be performed during normal operating hours of the cosmetology establishments. A Department inspector will contact the establishment owner, manager, or their representative upon arrival. The rule also requires that the establishment owner, manager, or their representative cooperate with the inspector in the performance of the inspection.

New §83.51 concerns initial inspections of cosmetology establishments before operation of the establishment. Subsection (a) provides that any new or relocated cosmetology establishment must be inspected and approved by the Department before it may operate. This provision implements Texas Occupations Code, §1603.103, which stipulates that a person may not operate a cosmetology establishment until the establishment has been inspected and approved by the Department. Subsection (a) also requires that a cosmetology establishment that has changed ownership must be inspected and approved by the Department, but the establishment may continue to operate prior to inspection. The new rule describes the procedure for the requesting and scheduling of inspections. The rule further provides that the owner of the establishment will be advised in writing of the results of the inspection, including whether the establishment meets minimum statutory and rule requirements. An establishment that does not meet the minimum requirements must be reinspected, and the rule describes the procedure for requesting a reinspection.

New §83.52 concerns periodic inspections of cosmetology establishments. In accordance with Texas Occupations Code, §1603.104(b), inspections of beauty salons and specialty salons are to be conducted at least every two years. Inspections of beauty culture schools, public and private, will be conducted on a risk-based schedule prescribed by proposed new §83.53. Section 83.52 requires that the salon owner, manager, or representative make available to the inspector the list required by §83.71(c) of all independent contractors who work in the salon. The rule provides that the salon owner will be advised in writing of the results of the inspection and whether the inspection was approved or not approved. The inspection report will indicate corrective modifications that must be made by the owner. The rule clarifies that the Department may also assess administrative penalties and administrative sanctions for violations that are found in an inspection. Subsection (e) states that as a result of a periodic inspection, an establishment may be moved to a risk-based schedule of inspections, and the establishment will be notified accordingly.

New §83.53 establishes a risk-based schedule of inspections and criteria to determine the frequency of inspections, in accordance with Texas Occupations Code, §1603.104(c). The owner of a cosmetology establishment must pay a fee for each risk-based inspection. This rulemaking does not include the amount of the fee for these inspections, but the Department anticipates that as part of a separate rulemaking the fee will be set at $150 per inspection. The rule establishes three tiers of risk-based inspections. Tier 1 requires inspection once each year; Tier 2 requires inspection twice each year; and Tier 3 requires inspection four times each year. In general, an establishment will fall into one of these tiers based on the type and seriousness of violations found in that establishment and whether violations are repeated. Beauty culture schools, public and private, because of the nature of the services they offer, are always on a risk-based inspection schedule. Schools are initially classified as Tier 1 but may be moved into a higher tier based on the school's history of violations. A salon owner, manager, or representative must make available to the inspector the list required by §83.71(c) of all independent contractors who work in the salon. The rule provides that the establishment owner will be advised in writing of the results of the inspection and whether the inspection was approved or not approved. The inspection report will indicate corrective modifications that must be made. The rule clarifies that the Department may also assess administrative penalties and administrative sanctions for violations that are found in an inspection. Subsection (f) describes the conditions under which a salon may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. Subsection (g) describes the conditions under which a school subject to a Tier 2 or Tier 3 schedule may be moved to a less frequent risk-based inspection schedule.

New §83.54 concerns corrective modifications required following an inspection. The Department will provide the establishment owner a list of corrective modifications and a deadline for completing modifications. The Department may grant an extension of time to complete modifications if satisfactory evidence is presented showing that the time period specified is inadequate. The rule also clarifies that further action may be warranted for certain violations, including administrative penalties and administrative sanctions.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rules are in effect there will be some additional costs to the Department in performing additional inspections. By focusing inspection activities on establishments that pose the greatest risk to public health and safety, the Department believes that it will be making the most effective and efficient use of its resources. The Department anticipates that additional revenue will be generated from new risk-based inspection fees, which are to be proposed in a separate rulemaking. The amount of the fee for each risk-based inspection is anticipated to be $150, and the Department anticipates that the fee revenue will cover the cost of performing the inspections. There will be no cost to local government as a result of enforcing or administering the new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be greater protection of public health and safety. The risk-based inspection schedule will enable the Department to focus its resources on the establishments that pose the greatest risk to the public.

Mr. Kuntz has determined that there will be some additional costs to persons who are required to comply with the proposed rules, including small or micro-businesses. Some establishments will be required to obtain more frequent inspections, based on a risk-based schedule, and pay a fee for each risk-based inspection. Those establishments may be small or micro-businesses. The fee for each risk-based inspection, although not set in this rulemaking, is anticipated to be $150. By clarifying that an establishment that changes ownership may continue to operate prior to inspection, the proposed rules may ease the burden of compliance with the inspection requirements in that situation.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: caroline.jackson@license.state.tx.us . The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Department to adopt rules as necessary to implement these chapters. In particular, the proposed new rules implement acts of the 79th Texas Legislature, Senate Bill 411.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the proposal.

§83.50. Inspections--General.

(a) Cosmetology establishments shall be inspected periodically, according to a risk-based schedule, or as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and this chapter, particularly those requirements relating to public safety, licensing, and sanitation. In addition, the department will make information available to cosmetology establishment owners and managers on best practices for risk-reduction techniques.

(b) Inspections shall be performed during the normal operating hours of the cosmetology establishments.

(c) The department inspector will contact the cosmetology establishment owner, manager, or their representative upon arrival at the cosmetology establishment, and before proceeding with the inspection.

(d) The cosmetology establishment owner, manager, or their representative shall cooperate with the inspector in the performance of the inspection.

§83.51. Initial Inspections--Inspection of Cosmetology Establishments Before Operation.

(a) Any new or relocated cosmetology establishment must be inspected and approved by the department before it may operate. Additionally, a cosmetology establishment that has changed ownership must be inspected and approved by the department but may continue to operate prior to inspection.

(b) The cosmetology establishment owner shall request an inspection from the department and pay the fee required by §83.80. In order for the department to schedule the inspection in a timely manner, the inspection request and fee should be submitted to the department no later than forty five (45) calendar days prior to the opening date of the establishment.

(c) Upon receipt of the owner's request and the fee, the department shall schedule the inspection date and notify the owner.

(d) Upon completion of the inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the cosmetology establishment meets or does not meet the minimum requirements of the Act and this chapter.

(e) For cosmetology establishments that do not meet the minimum requirements, the report will reflect those minimum requirements that remain to be addressed by the owner.

(f) A cosmetology establishment that does not meet the minimum requirements on initial inspection must be reinspected. The cosmetology establishment owner must submit the request for reinspection along with the fee required by §83.80, before the department will perform the reinspection.

§83.52. Periodic Inspections.

(a) Each beauty salon or specialty salon shall be inspected at least once every two years.

(b) The beauty salon or specialty salon owner, manager, or their representative must, upon request, make available to the inspector the list required by §83.71(c) of all independent contractors who work in the salon.

(c) Upon completion of the inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(d) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective modifications required to address the violations, in accordance with §83.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for certain violations, in accordance with §83.90.

(e) Based on the results of the periodic inspection, a cosmetology establishment may be moved to a risk-based schedule of inspections. The department will notify the owner of a cosmetology establishment, in writing, if the establishment becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.

§83.53. Risk-Based Inspections.

(a) Risk-based inspections are those required in addition to periodic inspections required under §83.52, for cosmetology establishments determined by the department to be a greater risk to public health or safety. In order to determine which establishments will be subject to risk-based inspections, the department has established criteria and frequencies for risk-based inspections. The owner of the cosmetology establishment shall pay the fee required under §83.80 for each inspection performed under this subsection, in a manner established by the department.

(b) Cosmetology establishments subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:
Figure: 16 TAC §83.53(b)

(c) At the time of inspection of a beauty salon or specialty salon, the owner, manager, or their representative must, upon request, make available to the inspector, the list required by §83.71(c) of all independent contractors who work in the shop.

(d) Upon completion of the inspection, the owner of the cosmetology establishment shall be advised in writing of the results. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(e) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner of the cosmetology establishment. The report will also indicate the corrective modifications required to address the violations, in accordance with §83.54. Additionally, the department may assess administrative penalties and/or administrative sanctions for certain violations, in accordance with §83.90.

(f) Beauty salons and specialty salons on a risk-based inspection schedule that have no violations of sanitation or licensing requirements in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the owner of the salon, in writing, if there is a change in the salon's risk-based schedule or if the salon is returned to a periodic inspection schedule.

(g) Beauty culture schools, public or private, subject to the Tier 2 or Tier 3 schedule, that have no violations of sanitation or licensing requirements in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule. The department will notify the owner or authorized representative of the school, in writing, if there is a change in the school's risk-based schedule.

§83.54. Corrective Modifications Following Inspection.

(a) When corrective modifications to achieve compliance are required, the department:

(1) shall provide the owner a list of required corrective modification(s) and a deadline for completing modifications; and

(2) may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) When corrective modifications to achieve compliance involve violations of certain sanitation rules or violations relating to unlicensed practice, those violations may be referred to the department's enforcement division for further action. The cosmetology establishment will be contacted by the department to arrange final resolution of these violations. Additionally, the department may assess administrative penalties and/or administrative sanctions for certain violations, in accordance with §83.90.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 5, 2005.

TRD-200505601
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 463-6208

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) proposes new §75.17, relating to scope of practice. Section 8 of H.B. 972, 79th Legislature, Regular Session, enacted two new sections of the Texas Chiropractic Act (Act), Texas Occupation Code §201.1525 and §201.1526. Section 201.1525 requires the Board to adopt rules clarifying what activities are included within the scope of practice of chiropractic and what activities are outside of that scope. The rules must also clearly specify the procedures that chiropractors may perform, specify any equipment and the use of that equipment that is prohibited, and may require a license holder to obtain additional training or certification to perform certain procedures or use certain equipment.

DEVELOPMENT OF RULES REGARDING SCOPE OF PRACTICE

Section 201.1526 requires that the Board establish methods under which the Board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will most be affected by the proposed rule. The methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons.

The Board met on June 2, 2005, to consider the rulemakings required under HB 972. The Board's Rules Committee met again on August 1, 2005, to discuss the scope of practice rules, to establish a process and schedule for developing a scope of practice rules, to identify persons and entities who will be most affected, and to discuss methods for contacting and involving such persons and entities. The Rules Committee identified the following groups as key persons and entities who will be most affected, for this rulemaking: Texas Chiropractic Association (TCA), the chiropractic colleges, the insurance industry, Consumers Union, Citizens Against Lawsuit Abuse, the Texas Trial Lawyers Association, and defense lawyers. Later, in response to a request from Ms. Bonnie Bruce, the office of Representative Solomons, the Texas Medical Association, and Ms. Bruce were added as interested parties. At the August 1st meeting, the Texas Chiropractic Association offered draft language for a scope of practice rule. The Rules Committee invited others to submit comments on what should be included in scope of practice rules by August 18, 2005. No comments were received regarding further contents for the scope of practice rules.

The Rules Committee and Board met again on August 25, 2005, to review and discuss the draft rules. The Rules Committee met next on September 30, 2005, and authorized release of the draft scope of practice rules for public comment in advance of the Board's meeting in November 2005. The draft rules were made available on the Board's web site. TCA attended the meeting and participated in the discussion. Written comments on the draft scope of practice rules were received from Parker Chiropractic College, Texas Chiropractic College, and TCA. The Board and Rules Committee met again on November 3, 2005, to consider comments received on the draft rule. The Board revised the rule and approved it for publication. TCA attended the meeting and participated in the discussion.

SCOPE OF PRACTICE

The practice of chiropractic is governed by the Texas Chiropractic Act, Texas Occupations Code Chapter 201 (the Act), and the scope of practice is addressed under §201.002, relating to practice of chiropractic, and §201.003, relating to applications and exemptions. The key aspects of chiropractic, as described under §201.002(b), are set forth under subsection (a) of the proposed rule. Section 201.002(c) describes procedures that are not included within the practice of chiropractic. All terms used in the proposed rule have the definitions established under §201.002(a).

One of the key aspects of practice is that the practice of chiropractic does not include incisive or surgical procedures. §201.002(c)(1). The Act defines "incisive or surgical procedure" as "includ[ing] making an incision into any tissue, cavity, or organ by any person or implement;" however, "the term does not include the use of a needle for the purpose of drawing blood for diagnostic testing." §201.002(a)(3). The Act defines "surgical procedure" as "includ[ing] a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services [CMS]."

CMS has adopted the American Medical Association's (AMA's) Current Procedural Terminology (CPT) Codebook, a numeric coding system consisting of descriptive terms and identifying codes that are used primarily to identify medical services and procedures furnished by physicians and other health care professionals. Health care professionals use the CPT Codebook to identify services and procedures for which they bill public or private health insurance programs. Decisions regarding the addition, deletion, or revision of CPT codes are made by the AMA. The CPT Codebook is republished and updated annually by the AMA. Additional information on the common procedure coding system is available at www.cms.hhs.gov/medicare/hcpcs/codpayproc.asp.

The proposed rule is divided into six subsections: aspects of practice; definitions; examination and evaluation; analysis, opinion, and diagnosis; treatment procedures and services; and questions regarding scope of practice.

Subsection (a), aspects of practice, describes the fundamental aspects as provided under the Act and the use of needles. Subsection (b) provides definitions for terms used in this section.

Subsection (c) describes examination and evaluation services related to the biomechanical condition of the spine and musculoskeletal system of the human body, the existence of subluxation complexes, treatment procedures, and differentiation of patients. Additional training or certification requirements for electro-diagnostic testing and performance of radiologic procedures are described under subsection (c)(3). Examination and evaluation services that are outside the scope of chiropractic, and the equipment used for such services, are described under subsection (c)(4).

Subsection (d) describes the types of analysis, diagnosis, or other opinions regarding the findings of examinations and evaluations that a chiropractor may render. Analysis, diagnosis, and other opinions regarding the findings of examinations and evaluations which are outside the scope of chiropractic are described under subsection (d)(2).

Subsection (e) describes treatment procedures and services that are within the scope of practice of chiropractic. The objectives of therapeutic chiropractic treatment procedures are described under subsection (e)(1). Specifically authorized treatment procedures and services are listed under subsection (e)(2). Treatment procedures and services that are outside the scope of practice of chiropractic are described under subsection (e)(3).

Subsection (f) describes the procedure for submitting further questions regarding the scope of practice as well as questions regarding interpretation of this rule.

FINDINGS

Ms. Sandra Smith, Executive Director of the Texas Board of Chiropractic Examiners, has determined that for each year of the first five years that this rule will be in effect there will be no additional cost to state or local governments. The Board anticipates a minor cost savings in the latter portion of the first five years that the rule will be in effect as the result of the Board no longer needing to provide decisions on whether a specific practice or procedure is within the scope of practice of chiropractic.

Ms. Smith has also determined that for each year of the first five years that this rule will be in effect that the public benefit of this rule will be a clearer understanding and delineation of the scope of the practice of chiropractic. Ms. Smith has also determined that there will be no additional economic costs to licensed chiropractors and other persons during the first five years that this rule will be in effect. There will be no effect on small or micro businesses.

COMMENT

Comments on this proposed rule may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701, facsimile (512) 305-6705, by the close of business 30 days from the date that this proposed rule is published in the *Texas Register*.

AUTHORITY

The new rule is proposed under Texas Occupations Code §201.152, relating to rules, and §201.1525, relating to rules clarifying scope of chiropractic, and §201.1526, relating to development of proposed rules regarding scope of practice of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 1525 mandates that the Board adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside the scope. Section 1526 requires that the Board establish methods for seeking input from persons who will be most affected by the proposed rule.

No other statutes, articles, or codes are affected by the proposed rule.

§75.17. Scope of Practice.

(a) Aspects of Practice.

(1) A person practices chiropractic if they

(A) use objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) perform nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

(2) The practice of chiropractic does not include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription; or

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials.

(3) Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical.

(A) The use of a needle for a procedure is incisive if the procedure results in the removal of tissue other than for the purpose of drawing blood.

(B) The use of a needle for a procedure is surgical if the procedure is listed in the surgical section of the CPT Codebook.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--the Texas Board of Chiropractic Examiners.

(2) CPT Codebook--the American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid

Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.

(3) On-sight--the presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(4) Practice of chiropractic--the description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(c) Examination and Evaluation

(1) In the practice of Chiropractic, licensees of this board provide necessary examination and evaluation services to:

(A) Determine the biomechanical condition of the spine and musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of the structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) Determine the existence of subluxation complexes of the spine and musculoskeletal system of the human body and to evaluate their condition including, but not limited to:

(i) The nature, severity, complicating factors and effects of said subluxation complexes;

(ii) the etiology of said subluxation complexes; and

(iii) The effect of said subluxation complexes on the health of an individual patient or population of patients;

(C) Determine the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) Determine the treatment procedures that are contraindicated in the therapeutic care of a patient or condition; and

(E) Differentiate a patient or condition for which chiropractic treatment is appropriate from a patient or condition that is in need of care from a medical or other class of provider.

(2) To evaluate and examine individual patients or patient populations, licensees of this board are authorized to use:

(A) physical examinations;

(B) diagnostic imaging;

(C) laboratory examination;

(D) electro-diagnostic testing;

(E) sonography; and

(F) other forms of testing and measurement.

(3) Examination and evaluation services which require a license holder to obtain additional training or certification, in addition to the requirements of a basic chiropractic license, include:

(A) Electro-neuro Diagnostic Testing training requirements and standards (paraspinal surface electromyography excluded) include:

(i) Board approved training consisting of one hundred and twenty (120) hours of initial clinical and didactic training in the technical and professional components of the procedures or completion of a neurology diplomate program with sixty (60) hours of certification training in the technical and professional components of the procedures (these hours may be applied to a doctor's annual continuing education requirement);

(ii) The professional component of these procedures may not be delegated to a technician and must be directly performed by a qualified and licensed doctor of chiropractic who must be on-sight during the technical component of the procedures;

(iii) The technical component of these procedures may be delegated to a technician if, said technician meets the training requirements of this section and is a licensed health care provider authorized to provide those services under Texas law;

(iv) The technical component of surface (non-needle) procedures may be delegated to a technician that has successfully completed Board approved training consisting of sixty (60) hours of initial clinical and didactic training in the technical component of the procedures; and

(v) Procedures must be performed in a manner consistent with generally accepted parameters, including clean needle techniques, standards of the Center for Communicable Disease, and meet safe and professional standards.

(B) Performance of radiologic procedures, which are authorized under the Texas Chiropractic Act, Texas Occupations Code, Chapter 201, may be delegated to an assistant who meets the training requirements set forth under §78.1 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(4) Examination and evaluation services, and the equipment used for such services, which are outside the scope of chiropractic practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other examination and evaluation services that are inconsistent with the practice of chiropractic and with the examination and evaluation services described under this subsection.

(d) Analysis, Diagnosis, and Other Opinions

(1) In the practice of chiropractic, licensees may render an analysis, diagnosis, or other opinion regarding the findings of examinations and evaluations. Such opinions could include, but are not limited to, the following:

(A) An analysis, diagnosis or other opinion regarding the biomechanical condition of the spine or musculoskeletal system including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology, or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) An analysis, diagnosis or other opinion regarding a subluxation complex of the spine or musculoskeletal system including, but not limited to, the following:

(i) the nature, severity, complicating factors and effects of said subluxation complex;

(ii) the etiology of said subluxation complex; and

(iii) the effect of said subluxation complex on the health of an individual patient or population of patients;

(C) An opinion regarding the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) An opinion regarding the likelihood of recovery of a patient or condition under an indicated course of treatment;

(E) An opinion regarding the risks associated with the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(F) An opinion regarding the risks associated with not receiving the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(G) An opinion regarding the treatment procedures that are contraindicated in the therapeutic care of a patient or condition;

(H) An opinion that a patient or condition is in need of care from a medical or other class of provider;

(I) An opinion regarding an individual's ability to perform normal job functions and activities of daily living, and the assessment of any disability or impairment;

(J) An opinion regarding the biomechanical risks to a patient, or patient population from various occupations, job duties or functions, activities of daily living, sports or athletics, or from the ergonomics of a given environment; and

(K) Other necessary or appropriate opinions consistent with the practice of chiropractic.

(2) Analysis, diagnosis, and other opinions regarding the findings of examinations and evaluations which are outside the scope of chiropractic include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other analysis, diagnosis, and other opinions that are inconsistent with the practice of chiropractic and with the analysis, diagnosis, and other opinions described under this subsection.

(e) Treatment Procedures and Services

(1) In the practice of chiropractic, licensees recommend, perform or oversee the performance of the treatment procedures that are indicated in the therapeutic care of a patient or patient population in order to:

(A) Improve, correct, or optimize the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the musculoskeletal system; and

(ii) the coordination, balance, efficiency, strength, conditioning, and functional health and integrity of the musculoskeletal system;

(B) Promote the healing of, recovery from, or prevent the development or deterioration of abnormalities of the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system on the health of an individual patient or population of patients; and

(C) Promote the healing of, recovery from, or prevent the development or deterioration of a subluxation complex of the spine or musculoskeletal system, including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of a subluxation complex;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of a subluxation complex;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of a subluxation complex; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of a subluxation complex on the health of an individual patient or population of patients.

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture and other reflex techniques;

(D) exercise therapy;

(E) patient education;

(F) advice and counsel;

(G) diet and weight control;

(H) immobilization;

(I) splinting;

(J) bracing;

(K) cold or low-level light laser;

(L) durable medical goods and devices;

(M) homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, neutraceuticals, and glandular extracts;

(N) non-prescription drugs;

(O) referral of patients to other doctors and health care providers; and

(P) other treatment procedures and services consistent with the practice of chiropractic.

(3) The treatment procedures and services provided by a licensee which are outside of the scope of practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other treatment procedures and services that are inconsistent with the practice of chiropractic and with the treatment procedures and services described under this subsection.

(f) Questions Regarding Scope of Practice. Further questions regarding whether a service or procedure is within the scope of practice and this rule may be submitted in writing to the Board and should contain the following information:

(1) a detailed description of the service or procedure that will provide the Board with sufficient background information and detail to make an informed decision;

(2) information on the use of the service or procedure by chiropractors in Texas or in other jurisdictions; and

(3) an explanation of how the service or procedure is consistent with either:

(A) using subjective or objective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) performing nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 5, 2005.

TRD-200505586

Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 305-6703

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.15

The Texas State Board of Examiners of Psychologists proposes amendment to §463.15, Oral Examination. This amendment is being proposed in adherence to the changes made by the 79th Texas Legislature to the section of the Psychologists' Licensing Act regarding the oral examination.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state of local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to clarify the requirements and standards of the oral examination. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.15. Oral Examination.

(a) (No change)

(b) Eligibility. To be eligible for licensure as a psychologist, all provisionally licensed psychologists shall be required to take and pass the oral exam administered by the Board. Only provisionally licensed psychologists may apply to take the oral exam. The Board shall waive this requirement for Specialists [~~Diplomates~~] of the American Board of Professional Psychology, Health Service Providers listed in the National Register [~~individuals who qualify for licensure by experience pursuant to Board rule §463.13,~~] and for individuals who qualify for licensure under reciprocity.

(c) A candidate for the oral examination must demonstrate sufficient entry-level knowledge of the practice of psychology to pass the exam based on the following standards:

(1) A candidate must have a total score of 64 or above from each of the two examiners to pass the exam.

(2) Scores are based on the demonstrated abilities of the candidate in nine content areas with a possible score in each content

score of 9 points for a well articulated verbal answer, 8 points for a good or passing answer, 3 points for a weak, vague or incomplete answer, and minus 10 points for an answer that is substantially incomplete or incorrect.

(3) The nine content area are as follows:

(A) Identifies the problems (e.g. initial hypotheses, differential diagnoses, etc.);

(B) Identifies a specific and plausible strategy for gathering further data to refine the problem definition (e.g. psychometrics, observation data collection, etc.);

(C) Develops a realistic intervention or action plan on the basis of the initial formulation;

(D) Recognizes and can formulate an effective response to crises;

(E) Attends to cultural and diversity issues;

(F) Demonstrates awareness of professional limitations;

(G) Can recognize and apply laws which are relevant to the case;

(H) Can recognize and apply professional standards that are relevant; and

(I) Can recognize and apply ethical standards or ethical reasoning pertinent to the case.

(4) Each candidate is presented with a vignette, which is representative of a situation commonly encountered in the area of testing. Candidates are required to articulate a case formulation according to a standard or model that is generally recognized in their area of testing. Candidates are required to respond to questions associated with each vignette.

(5) Areas of psychology in which a candidate may choose to be tested are: clinical, counseling, school, neuropsychological, and industrial and organizational.

(6) Advance additional information is provided to each candidate in the form of a brochure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 30, 2005.

TRD-200505545
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 305-7700

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22 TAC §463.27

The Texas State Board of Examiners of Psychologists proposes amended rule §463.27, Temporary License for Person Licensed in Other States. This amendment is being proposed in adherence to the changes made by the 79th Legislative to the section of the Psychologists' Licensing Act dealing with temporary licenses.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be minimal fiscal implications for state and local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to provide a mechanism for the Board to issue limited temporary licensure. There will be no effect on small businesses. There is minimal economic cost to persons who are required to comply with the rule as proposed; a $100 licensure fee will be charged per applicant for this license.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.27. Temporary License for Person Licensed in Other States [~~Temporary Privileges to Practice Psychology in Texas~~].

(a) Temporary licensure is available to applicants for a period of not longer than 30 days from the time the application is approved until the expiration of the 30 day, provided the following conditions are met by the applicant.

(1) Submission of a completed application for temporary licensure, including a brief description of the type of psychological service to be provided which is acceptable to the Board and the requested time period for the temporary license;

(2) Submission of the required fee;

(3) Submission of proof that the applicant holds current licensure to practice as a licensed psychologist or a licensed psychological associate in another state with licensing requirements substantially equivalent to the Board's;

(4) Submission of documentation directly from the state in which the applicant is currently licensed indicating that the applicant is in good standing; and

(5) The applicant provides documentation that the applicant has passed the EPPP at the Texas cut-off for the type of temporary license sought.

(b) Licensed psychologists and licensed psychological associates with temporary licenses must practice in adherence to the Board rule 465.2(h), Supervision, and may consult with the supervising Texas licensed psychologist.

(c) The specific period of time for which the applicant is issued a temporary license is stated in the Board's approval letter which issues the temporary license.

(d) Substantial equivalency of the other state may be documented by the applicant providing a copy of the other board's rules and regulations with pertinent sections highlighted which indicate training and exam requirements for a particular type of license. This material is then reviewed for substantial equivalency by the Board.

(e) This type of temporary license is not available to an applicant who has made application for permanent licensure in this state. Upon receipt of an application for a permanent license, the temporary

license is immediately null and void and the individual can no longer practice legally in Texas.

(f) The holder of a temporary license will not be further notified as to the ending date of the temporary license, other than the ending date that is provided in the initial issuance letter. Practicing with an expired temporary license qualifies the licensee for disciplinary review by the Board.

(g) Purposes for which a temporary license may be issued include: to serve as an expert witness in court, to assist a patient in transition to mental health practitioner in Texas, and others as approved by the Board.

(h) Applicants for temporary licenses who hold current status as CPQ, National Health Service Provider, or ABPP may have documentation from the credentialing entity sent directly to the Board as compliance with and in lieu of subsections (a)(3)and(5).

[~~A person licensed as a psychologist and in good standing in another state, may perform psychological services with individuals, groups, or organizations within the State of Texas for a period of time not to exceed 30 days within a calendar year. Persons applying for temporary privileges must apply in writing to the Board at least 30 days prior to the expected working days in Texas. The petition for temporary privileges must include but shall not be limited to psychological services to be performed; the specific dates of the psychological services; and documentation of credentials. Any psychologist granted temporary privileges must abide by the rules and regulations of the Board during the period the privileges are in effect. This rule does not apply to those persons who reside or who are in the process of establishing residence in Texas or who provide psychological services primarily in Texas. This rule cannot be used as an entry or vehicle for entry to licensure in Texas.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 30, 2005.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 305-7700

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CHAPTER 473. FEES

22 TAC §473.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.5, Miscellaneous Fees. This amendment is being proposed to charge an application fee for a new temporary license.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be minimal fiscal implications for state and local government as a result of enforcing or administering the rule.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to allow the Board to recover costs for issuing temporary licenses. There will be no effect on small businesses. There is minimal anticipated economic cost to persons who are required to comply with the rule as proposed. The cost is a $100 application fee for the temporary license.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§473.5. Miscellaneous Fees (Not Refundable).

(a) - (h) (No change.)

(i) Limited Temporary License--$100.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 30, 2005.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 140. HEALTH PROFESSIONS REGULATION

SUBCHAPTER A. PERFUSIONISTS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§140.1, 140.3 - 140.5, 140.7 - 140.21, new §§140.2, 140.6, and 140.22, and the repeal of §140.2 and §140.6, concerning the licensing and regulation of perfusionists.

BACKGROUND AND PURPOSE

Through the enactment of Senate Bill 403, 79th Legislature, Regular Session (2005), Sunset Legislation, relating to the continuation and functions of the Texas State Board of Examiners of Perfusionists (board), the Governor and Legislature have directed that the State Board of Examiners of Perfusionists (board) be abolished and has been replaced by the Texas State Perfusionist Advisory Committee. Also, revisions to the rules are due to House Bill 2680, 79th Legislature, Regular Session (2005), relating to reduced fees and continuing education requirements for retired health professionals, including licensed perfusionists, engaged in the provision of voluntary charity care. In addition, the legacy board and rules were located at Title 22,

Part 33, Chapter 761, and were transferred to this chapter on September 1, 2005.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 140.1 - 140.21 have been reviewed and the need for the rules continues to exist; however revisions are necessary to implement recent legislation and to update and clarify the rules.

SECTION-BY-SECTION SUMMARY

Amendments to §§140.1, 140.3 - 140.5, and 140.7 - 140.21 also reflect changes to Texas Occupations Code, Chapter 603, relating to the abolishment of the board, the former licensing authority, and the transfer of the board's functions variously to the department, the Commissioner of the Department of State Health Services (commissioner), and the executive commissioner.

Repeal of §140.2 (relating to the board, which has been abolished) and §140.6 (relating to an exemption from licensure, which has been repealed) is being proposed in accordance with Senate Bill 403 of the 79th Regular Legislative Session.

New sections §140.2 (relating to Fees), §140.6 (relating to the new Jurisprudence Examination), and §140.22 (relating to new Texas State Perfusionist Advisory Committee (Committee)), are proposed to incorporate existing rule language from the sections being repealed which is still required, and to implement recent legislation.

Amendments to §140.1 reflect the abolishment of the board and the transfer of the board's functions to other governmental entities. The section has been renumbered to reflect deletions and insertions.

New section §140.2 includes the same rule language related to fees previously included in the section proposed for repeal. The only new language is found at §140.2(1)(F), which reflects the new late renewal fees which become effective September 1, 2007, and §140.2(1)(K), which sets reduced renewal fees for a retired perfusionist performing voluntary charity care.

Amendments to §§140.3 - 140.5 reflect the transfer of the board's authority to the department.

New section §140.6 sets out the department's procedures for establishing and administering a new jurisprudence examination.

Amendments to §§140.7 - 140.11 reflect the transfer of the board's authority to the department.

Amendments to §140.12 reflect the transfer of the board's authority to the department, and contain non-substantive wording changes to clarify the rules. New §140.12(a)(8) reflects the department's authority to refuse to renew a license based on non-payment of an administrative penalty assessed by the department. Amendments to §140.12(c) - (d) reflect the reduction of the period in which a licensee may submit a late renewal from two years to one year. New §140.12(f) establishes reduced renewal fees and continuing education requirements for retired perfusionists providing voluntary charity care.

Amendments to §140.13 reflect the transfer of the board's authority to the department. New §140.13(d) establishes reduced continuing education requirements for retired perfusionists providing voluntary charity care equal to two thirds of the amount of hours required for license renewal by a licensed perfusionist.

Amendments to §140.14 reflect the transfer of the board's authority to the department, and include new language referencing additional disciplinary authority granted to the department to refuse to renew a license.

Amendments to §140.15 reflect the transfer of the board's authority to the department, and delete unnecessary references to the department's mailing address. New §140.15(h) reflects the department's authority to issue a cease and desist order, and to impose an administrative penalty for a violation of that order.

Amendments to §140.16 reflect the transfer of the board's authority to the department.

Amendments to §140.17 reflect the transfer of the board's authority to the department. New §140.17(s) reflects the department's authority to enter into an agreed order requiring a licensee to pay a refund to a consumer as provided in the agreement.

Amendments to §§140.18, 140.19, and 140.20 reflect the transfer of the board's authority to the department, and license sanctioning.

Amendments to §140.21 add an administrative penalty schedule to the existing severity levels and sanctions guide.

New section §140.22 sets out the department's policies and procedures for establishing and administering the new Texas State Perfusionist Advisory Committee. Specifically, §140.22(a) concerns officers, §140.22(b) concerns meetings, §140.22(c) concerns quorum, §140.22(d) concerns transaction of official business, §140.22(e) concerns policy against discrimination, §140.22(f) concerns conflict of interest, §140.22(g) concerns membership and employee restrictions, §140.22(h) concerns attendance, §140.22(i) concerns reimbursement for expenses, §140.22(j) concerns rules of order, §140.22(k) concerns agendas, §140.22(l) concerns minutes, §140.22(m) concerns official records, §140.22(n) concerns the official seal, §140.22(o) concerns a registry, §140.22(p) concerns public interest information, and §140.22(q) concerns powers and duties of the executive secretary.

FISCAL NOTE

Kathy Perkins, Manager, Health Care Quality Section, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to

continue to ensure public health and safety through the licensing and regulation of perfusionists.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Michael De La Cruz, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628 or by email to michael.delacruz@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§140.1 - 140.22

STATUTORY AUTHORITY

The proposed amendments and new rules are authorized by Texas Occupations Code, Chapter 603; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments and new rules affect the Occupations Code, Chapter 603, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§140.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (3) (No change.)

(4) Committee--The Texas State Perfusionist Advisory Committee [~~Board--The Texas State Board of Examiners of Perfusionists~~].

[~~(5) Board of Health--The Texas Board of Health.~~]

(5) [~~(6)~~] Cardiopulmonary Surgery--Surgery pertaining to the heart, great vessels, or lungs.

(6) [~~(7)~~] Commissioner--The Commissioner of the Department of State Health Services.

(7) [~~(8)~~] Contested Case--A proceeding in accordance with APA and this chapter, including, but not restricted to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the Commissioner [~~board~~] after an opportunity for an adjudicative hearing.

(8) [~~(9)~~] Delegated authority--As defined in the Texas Medical Practice Act, Texas Occupations Code, Chapter 157(d)(1), and the rules pertaining thereto adopted by the Texas State Board of Medical Examiners.

(9) [~~(10)~~] Department--The Department of State Health Services [~~Texas Department of Health~~].

(10) Executive Commissioner--The Executive Commissioner of the Health and Human Services Commission.

(11) - (16) (No change.)

(17) Licensee--A person who holds a current license as a perfusionist or provisional licensed perfusionist issued by the department [~~board~~].

(18) - (21) (No change.)

(22) Presiding Officer--Presides over the Committee and serves at the pleasure of the Commissioner [~~Chairman of Board~~].

(23) Provisional licensed perfusionist--A person provisionally licensed under the [~~this~~] Act.

§140.2. Fees.

(a) The schedule of fees for licensure as a perfusionist or a provisional licensed perfusionist is as follows:

(1) application and initial license fees--$175;

(2) license fee for upgrade of provisional licensed perfusionist--$75;

(3) a license renewal issued for a one-year term--$175;

(4) a license renewal issued for a two-year term--$350;

(5) late renewal fee (prior to September 1, 2007)--$100;

(6) late renewal fee (on or after September 1, 2007):

(A) less than 90 days late--a fee that is equal to 1/4 times the amount of the renewal fee due;

(B) more than 90 days and less than one year late--a fee that is equal to 1/2 times the amount of the renewal fee due.

(7) license certificate and identification card replacement fee--$10;

(8) child support reinstatement fee--$40;

(9) student loan default reinstatement fee--$40;

(10) verification fee--$10 per licensee; and

(11) retired perfusionist license renewal issued for a two-year term (in accordance with §140.12(f) of this title relating to License Renewal)--$175

(b) An applicant whose check for the application fee is not honored by the financial institution may reinstate the application by remitting to the department a money order or check for guaranteed funds within 30 days of the date of receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(c) A licensee whose check for the renewal fee is not honored by the financial institution may remit to the department a money order or check for guaranteed funds within 30 days of the date of receipt of the department's notice. Otherwise, the license shall not be renewed. If a renewal card has already been issued, it shall be subject to revocation.

(d) Fees paid to the department by applicants are not refundable.

(e) Any remittance submitted to the department in payment of a required fee must be in the form of a personal check, certified check, or money order.

(f) The department shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through rule amendments.

(g) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(h) For all applications and renewal applications, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

§140.3. Professional and Ethical Conduct.

(a) Code of ethics. These rules shall constitute a code of ethics as authorized by the Act, §603.151(6).

(1) Professional representation and responsibilities.

(A) - (E) (No change.)

(F) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of department [~~board~~] rules to the [~~board's~~] executive secretary.

(G) A licensee shall comply with any order relating to the licensee which is issued by the department [~~board~~].

(H) - (I) (No change.)

(J) A licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department [~~board~~] or its authorized representative or by the use of threats or harassment against any person associated with investigation or disciplinary proceedings.

(K) - (P) (No change.)

(Q) A licensee shall supervise a provisional licensed perfusionist in accordance with §140.9 [~~§761.9~~] of this title (relating to Provisional Licensed Perfusionists).

(2) - (3) (No change.)

(4) Sanctions. A licensee shall be subject to disciplinary action by the department [~~board~~] if under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Article 56.31, the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office.

(b) Disclosure. A licensee shall make a reasonable attempt to notify each patient of the name, mailing address, and telephone number of the department [~~board~~] for the purpose of directing complaints to the department [~~board~~] by providing notification:

(1) - (3) (No change.)

(c) (No change.)

§140.4. Educational Requirements for Licensure.

General.

(1) The department [~~board~~] shall approve as meeting licensure requirements a perfusion education program that has educational standards that are as stringent as those established by the Accreditation Committee for Perfusion Education (AC-PE) and approved by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or their successors.

(2) - (3) (No change.)

(4) In the event that an educational deficiency is present, an applicant will have one year in which to complete the additional course work acceptable to the department [~~board~~] before the application will be voided and the applicant will be required to reapply and to pay an additional application fee.

§140.5. Examination Procedures for Perfusionist Licensure.

(a) Frequency. Examinations will be administered for the department [~~board~~] at least once each year by a designee of the department [~~board~~].

(b) Requirements.

(1) The executive secretary shall notify an applicant when all requirements for licensure have been met except the taking and passing of the required examination. The department [~~board~~] shall forward or cause to be forwarded an examination registration form to each approved applicant as soon as the application has been approved.

(2) An applicant who wishes to take a scheduled examination must complete the examination registration form which must be received by the department [~~board~~] or designee by the deadline established by the board. The fee shall be paid to the designee of the department [~~board~~].

(3) The examination for licensure shall be an examination approved by the department [~~board~~]. A designee of the department [~~board~~] shall administer and grade examinations and report to the board if the applicant has passed or failed the examination.

(4) If an applicant has already successfully completed the required examination or the examination administered by the American Board of Cardiovascular Perfusion (ABCP), the applicant shall not be required to be reexamined, provided the applicant furnishes the department [~~board~~] a copy of the test results indicating that the applicant passed the examination and proof that he or she has been certified by the ABCP for some time period within three years immediately preceding date of application.

(5) (No change.)

§140.6. Jurisprudence Examination.

(a) The department shall develop and administer a jurisprudence examination to determine an applicant's knowledge of the Act, this section, and any other applicable laws of this state affecting the practice of perfusion.

(b) The examination shall be administered in a web-based format through an examination contract, which specifies that applicants for examination must be able to:

(1) pay the examination fee online by credit card; and

(2) receive their examination results electronically immediately upon completion of the examination.

(c) The department shall revise the jurisprudence examination as needed.

(d) All applicants for licensure must pass the jurisprudence examination prior to submitting an application for licensure. The jurisprudence examination must be taken and passed no more than two years prior to the date of the application for licensure.

§140.7. Application Procedures.

(a) Fitness of applicants for perfusion licensure.

(1) In determining the qualifications of applicants for licensure the department [~~board~~] may request and consider any of the following:

(A) - (C) (No change.)

(D) any other information which the department [~~board~~] considers pertinent to determining the qualifications of an applicant.

(2) The substantiation of any of the following items related to an applicant may be, as the department [~~board~~] determines, the basis for the denial of licensure of the applicant:

(A) - (F) (No change.)

(G) any misrepresentation in application or other materials submitted to the department [~~board~~].

(b) General Procedures.

(1) An applicant must submit a sworn application and all required information and documentation of credentials on official department [~~board~~] forms.

(2) The department [~~board~~] will not consider an application as officially submitted until the applicant pays the application fee and submits all required written documentation. The application and initial license fee must accompany the application form.

(3) The executive secretary will send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the department's [~~board's~~] notice shall be void.

(c) Required application materials.

(1) The application form shall contain:

(A) (No change.)

(B) a statement that the applicant has read the Act and [~~board~~] rules and agrees to abide by them;

(C) the applicant's permission for the department [~~board~~] to seek any information or references it deems appropriate to determine the applicant's qualifications and fitness;

(D) a statement that the applicant, if issued a license, shall return the license certificate and license identification card to the department [~~board~~] upon the revocation or suspension of the license;

(E) (No change.)

(F) a statement that the applicant has been informed that materials submitted in the licensure process become the property of the department [~~board~~] and are nonreturnable; and

(G) (No change.)

(2) Applicants must submit official transcript(s) from a perfusion education program approved by the department [~~board~~] or from a program with requirements as stringent as those established by the Accreditation Committee for Perfusion Education (AC-PE) and approved by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or their successors.

(3) - (4) (No change.)

(5) If an applicant is or has been licensed, certified, or registered in another state, territory, or jurisdiction, the applicant must submit information required by the department [~~board~~] concerning that license, certificate or registration on official department [~~board~~] forms.

(6) - (8) (No change.)

§140.8. Determination of Eligibility.

(a) The department shall notify an applicant in writing of the receipt of the applicant's application and any other relevant evidence relating to qualifications established by rule. The notice must state whether the applicant has qualified for examination or licensure based on the application and other submitted evidence. If the applicant is not qualified, the notice must state the reasons for the applicant's failure to qualify. [~~The board may delegate approval of applications for licensing to a committee of the board or the executive secretary.~~]

(b) The department [~~board~~] may deny the application if the person has:

(1) (No change.)

(2) failed to pass the examination prescribed by the department [~~board~~] as set out in §140.5 [~~§761.5~~] of this title (relating to Examination Procedures for Perfusionist Licensure), if applicable;

(3) failed to remit any applicable fees required in §140.2 [~~§761.2(s)~~] of this title (relating to Fees [~~The Board's Operation~~]);

(4) failed or refused to properly complete or submit any application form(s) or endorsement(s), or presented false information on the application form, or any other form or document required by the department [~~board~~] to verify the applicant's qualifications for licensure;

(5) (No change.)

(6) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee as set out in §140.14 [~~§761.14~~] of this title (relating to Licensing of Persons with Criminal Backgrounds To [~~to~~] Be a Licensed Perfusionist and Provisional Licensed Perfusionist), and in Texas Occupations Code, Chapter 53.

(7) - (8) (No change.)

(c) If after review, the department [~~committee~~] determines that the application should not be approved, the executive secretary shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing and an informal settlement conference. The notice and hearing shall be in accordance with §140.15 [~~§761.15~~] of this title (relating to Violations, Complaints, and Subsequent Department Actions [~~Violations, Complaints, Investigations, and Procedures~~]).

(d) An applicant whose application has been denied under subsection (b)(4), (5), (6), (7), or (8) of this section shall be permitted to reapply after a period to be determined by the department [~~board~~]. The applicant shall submit with the reapplication, proof satisfactory to the department [~~board~~] of compliance with all rules of the department [~~board~~] and the provisions of the Act in effect at the time of reapplication.

(e) Processing procedures are as follows.

(1) Time periods. The department [~~board~~] shall comply with the following procedures in processing application for licensure and renewal.

(A) - (B) (No change.)

(2) Reimbursement of fees.

(A) (No change.)

(B) Good cause for exceeding the time period is considered to exist if:

(i) (No change.)

(ii) another public or private entity relied upon by the department [~~board~~] in the application process caused the delay; or

(iii) any other condition exists giving the department [~~board~~] good cause for exceeding the time period.

(3) Appeal. If a request for reimbursement under paragraph (2) of this subsection is denied by the executive secretary, the applicant may appeal in writing to the department [~~chairman of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chairman at the address of the board that the applicant requests full reimbursement of all fees paid in that particular application process because the application was not processed within the applicable time period. The executive secretary shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the chairman of the board. The chairman shall provide written notice of the chairman's decision to the applicant and the executive secretary.~~] An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) Contested cases. The time periods for contested cases [~~cased~~] related to the denial of licensure or license renewals are not included within the time periods stated in paragraph (1) of this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the commissioner [~~board~~] is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§140.9. Provisional Licensed Perfusionists [~~Perfusionist~~].

(a) (No change.)

(b) Termination. The supervising licensed perfusionist must submit written notification of termination of supervision to the department [~~board~~] and the supervisee within 14 days of when supervision has ceased. The provisional licensed perfusionst shall make a good faith effort to ensure that the supervising licensed perfusionist submits an appropriate notification.

(c) Changes. Any change in the supervision shall be submitted in writing to the [~~Board's~~] Executive Secretary. The signature of the supervising licensed perfusionist shall be included in the written notice.

(d) (No change.)

(e) Time limits. A provisional license is valid for one year from the date it is issued and may be renewed annually for not more than three times by the procedures set out at §140.12 [~~§761.12~~] of this title (relating to License Renewal).

(f) Variance. An applicant or provisional licensee may request the department [~~board~~] to approve that supervision and direction be performed by a licensed physician in lieu of a licensed perfusionist.

(1) (No change.)

(2) [~~The application committee of the board shall consider the request at its next scheduled meeting.~~] The applicant will be notified of approval or denial of the request in writing.

§140.10. Licensing After Examination.

(a) Issuance of licenses.

(1) Upon request the department [~~board~~] shall send each applicant who has been approved and who has passed the examinations, if applicable, a form to complete and return with the upgrade fee, if applicable.

(2) Upon receiving an applicant's form and fee, the department [~~board~~] shall issue a license certificate and license identification card containing a license number.

(b) Replacement. The department [~~board~~] shall replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the license replacement fee. Requests shall include a statement detailing the loss or destruction of the licensee's original license or identification card or be accompanied by the damaged certificate or card.

(c) License certificates.

(1) The department [~~board~~] shall prepare and provide to each licensee a license certificate and identification card which contains the licensee's name, license number, and expiration date.

(2) (No change.)

(3) Any certificate or identification card issued by the department [~~board~~] shall remain the property of the department [~~board~~] and must be surrendered to the department [~~board~~] on demand.

(4) (No change.)

(d) Upgrading a provisional license.

(1) The provisional licensed perfusionist shall submit to the department [~~board~~] a photocopy of the examination results from the American Board of Cardiovascular Perfusion and a written request to upgrade.

(2) The provisional licensed perfusionist who successfully completes the licensing examination shall surrender to the department [~~board~~] the provisional license certificate and provisional license identification card, and submit the license fee for upgrade of provisional licensed perfusionist to licensed perfusionist.

(3) (No change.)

§140.11. Changes of Name or Address.

(a) The licensee shall notify the department [~~board~~] of changes in name or preferred mailing address within 30 days of such change(s).

(b) (No change.)

(c) Before another license certificate and identification card will be issued by the department [~~board~~], notification of name changes must be mailed to the executive secretary and shall include a duly executed affidavit and a copy of a marriage certificate, court decree evidencing such change, or a Social Security card reflecting the new name. The licensee shall return any previously issued license certificate and identification card and remit the appropriate replacement fee as set out in §140.2 [~~§761.2(r)~~] of this title (relating to Fees [~~The Board's Organization and Administration~~]).

§140.12. License Renewal.

(a) General.

(1) (No change.)

(2) A licensee must renew the license annually or biannually, as determined by the department [~~board~~].

(3) - (4) (No change.)

(5) The department [board] shall not renew the license of the licensee who is in violation of the Act or [board] rules at the time of application for renewal.

(6) The department [board] shall deny renewal of the license of a licensee if renewal is prohibited by the Education Code, §57.491 relating to student loan default.

(7) The department [board] shall deny renewal of the license of a licensee for whom a contested case is pending until resolution of the case, but such individual remains licensed pending resolution of the contested case, if timely application for renewal is made.

(8) The department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(9) [(8)] A licensee who has been notified of a student loan default shall surrender their license until the loan payment has been resolved to the satisfaction of the National Student Loan Center.

(10) [(9)] A licensee shall pay a late renewal [reinstatement] fee as set out in §140.2 [§761.2] of this title (relating to Fees [The Board's Organization and Administration]) prior to issuance of the license under this section.

(b) License renewal requirements.

(1) At least 30 days prior to the expiration date of a person's license, the executive secretary shall send notice to the licensee at the address in the department's [board's] records of the expiration date of the license, the amount of the renewal fee due, and a license renewal form which the licensee must complete and return to the department [board] with the required renewal fee. The return of the completed renewal form in accordance with the requirements of paragraph (3) of this subsection shall be considered confirmation of the receipt of renewal notification.

(2) - (3) (No change.)

(4) The department [board] shall issue to a licensee who has met all requirements for renewal a license certificate and identification card.

(c) Late renewal requirements.

(1) (No change.)

(2) A person whose license has expired for not more than one year [two years] may renew the license by submitting the license renewal form and the appropriate renewal and late renewal fees to the executive secretary. The renewal is effective if it is mailed to the executive secretary within one year [two years] after the expiration date of the license. The postmark date shall be considered as the date of mailing.

(3) A person whose license has been expired one year [two years] or more may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining an original license.

(d) Expiration of license.

(1) (No change.)

(2) A person who fails to renew a license after one [two] years shall surrender the license certificate and license identification card to the department [board].

(e) Active duty. If a licensee fails to timely renew his or her license on or after August 1, 1990, and the licensee is or was on active duty with the armed forces of the United States of America, the licensee may renew the license in accordance with this subsection.

(1) - (2) (No change.)

(3) A copy of the official orders or other official military documentation showing that the licensee is or was on active duty shall be filed with the department [board] along with the renewal form.

(4) A copy of the power of attorney from the licensee shall be filed with the department [board] along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(5) A licensee renewing under this subsection shall pay the applicable renewal fee, but not the late renewal [reinstatement fee or any penalty] fee.

(f) Renewal for Retired Perfusionists Performing Voluntary Charity Care.

(1) A "retired perfusionist" is defined as a person who is:

(A) above the age of 55; and

(B) is not employed for compensation in the practice of perfusion; and

(C) has notified the department in writing of his or her intention to retire and provide only voluntary charity care.

(2) "Voluntary charity care" for the purposes of this subsection is defined as the practice of perfusion by a retired perfusionist without compensation or expectation of compensation.

(3) A retired perfusionist providing only voluntary charity care may renew his or her license by submitting a renewal form; the retired perfusionist renewal fee required by §140.2 of this title (relating to Fees); and the continuing education education hours required by §140.13 of this title (relating to Minimum Continuing Education Requirements).

§140.13. Minimum Continuing Education Requirements.

(a) - (b) (No change.)

(c) Exceptions. Any deviation from the continuing education requirements will be reviewed on a case-by-case basis by the department [Board]. A request for special consideration shall be submitted in writing a minimum of 60 days prior to expiration of the license.

(d) Licensees who are approved by the department for renewal in accordance with §140.12(f) of this title (relating to Retired Perfusionists Performing Voluntary Charity Care) may complete reduced continuing education requirements equal to two-thirds of the number of continuing education hours required for renewal for a licensed perfusionist.

§140.14. Licensing of Persons with Criminal Backgrounds To Be a Licensed Perfusionist and Provisional Licensed Perfusionist.

(a) Criminal convictions which directly relate to the profession of perfusion.

(1) The department [board] may suspend or revoke an existing license, disqualify a person from receiving a license, refuse to renew a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee.

(2) In considering whether a criminal conviction directly relates to the occupation of a licensed perfusionist or provisional licensed perfusionist, the department [board] shall consider:

(A) (No change.)

(B) the relationship of the crime to the purposes for licensure as a perfusionist or provisional perfusionist. The following felonies and misdemeanors listed in clauses [~~clause~~] (i) - (iv) of this subparagraph relate to the license of a perfusionist or provisional perfusionist because these criminal offenses indicate an inability or a tendency to be unable to perform as a licensed perfusionist or a provisional licensed perfusionist:

(i) - (iv) (No change.)

(v) the misdemeanors and felonies listed in clauses (i) - (iii) of this subparagraph [~~paragraph (2)(B) of this subsection~~] are not inclusive in that the department [~~board~~] may consider other particular crimes in special cases in order to promote the intent of the Act and these sections;

(C) (No change.)

(D) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of a licensed perfusionist or provisional licensed perfusionist. In making this determination, the department [~~board~~] will apply the criteria outlined in Texas Occupations Code, Chapter 53.

(b) Procedures for revoking, suspending, or denying a license to persons with criminal backgrounds.

(1) The committee's [~~board's~~] executive secretary will give written notice to the person that the department [~~board~~] intends to deny, suspend, deny renewal of, or revoke the license in accordance with the provisions of the Administrative Procedure Act and Texas Government Code, Chapter 2001, and the department's [~~board's~~] formal hearing procedures, §140.15 of this title [~~§761.15~~] (relating to Violations, Complaints, and Subsequent Department Actions [~~Investigations, and Procedures~~]) and §140.16 of this title [~~§761.16~~] of this title (relating to Formal Hearings).

(2) If the department [~~board~~] denies an application or renewal application for a license, or suspends, or revokes [~~an application for~~] a license under this section, the executive secretary will give the person written notice:

(A) - (B) (No change.)

§140.15. Violations, Complaints, and Subsequent Department Actions [~~Investigations, and Procedures~~].

(a) Types of violations and prohibited actions.

(1) - (2) (No change.)

(3) A licensee may not issue an insufficient funds check and fail to redeem such instrument within 10 days after being given written notice by the department [~~board~~].

(4) A licensee may not violate any of the provisions of the Act or any rules in this section [~~adopted by the board~~].

(b) Filing of complaints.

(1) A person wishing to complain about a prohibited act or alleged violation a licensee or other person acting as a perfusionist shall notify the executive secretary. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive secretary's office. [~~The mailing address is Texas State Board of Examiners of Perfusionists, 1100 West 49th Street, Austin, Texas 78756-3183.~~]

(2) Upon receipt of a complaint, the executive secretary shall send to the complainant an acknowledgment letter and the department's [~~board's~~] complaint form, which the complainant will be requested to complete and return to the executive secretary before further action can be taken. If the complaint is made by a visit to the executive secretary's office, the form may be given to the complainant at that time; however, it must be completed and returned to the executive secretary before further action can be taken. Copies of the complaint form may be obtained from the department [~~Texas State Board of Examiners of Perfusionists, 1100 West 49th Street, Austin, Texas 78756-3183~~].

(3) (No change.)

(c) Investigation of complaints.

(1) The executive secretary on behalf of the department [~~board~~] is responsible for handling complaints.

(2) If the executive secretary determines that the complaint does not come within the department's [~~board's~~] jurisdiction, the executive secretary shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such complaints.

(d) Actions by executive secretary.

(1) The department [~~executive secretary alone or with the concurrence of the Complaint Committee~~] may take one or more of the following actions:

(A) (No change.)

(B) determine that a nonlicensed person has committed a prohibited action under subsection (b) of this section. The department [~~complaint committee~~] shall consider the seriousness and the effects of the violation and shall initiate one of the following actions:

(i) (No change.)

(ii) [~~with the concurrence of the board chairman,~~] ask the attorney general, district attorney, or county attorney to take appropriate legal action against the violator; or

(C) determine that a licensee has violated the Act or a [~~board~~] rule in this section and propose denial of renewal, revocation, or suspension of the license, reprimand, or probation of the license suspension.

(2) Whenever the department [~~executive secretary~~] dismisses a complaint or closes a complaint file, the department [~~executive secretary~~] will give a summary report of the final action to [~~the board,~~] the complainant, and the accused party.

(e) Final action by the department [~~board~~].

(1) If the department [~~board~~] suspends a license, the suspension remains in effect until the department [~~board~~] determines that the reasons for the suspension no longer exist.

(2) During the time of suspension, the former license holder shall return the license certificate and license identification card to the department [~~board~~].

(3) Upon showing of good cause by the former license holder, the department [~~board~~] may probate the license suspension.

(4) If a suspension overlaps a license renewal period, the former license holder must comply with the normal renewal procedures in these rules; however, the license will not be renewed until the department [~~board~~] determines that the reasons for suspension have been removed.

(5) If the department [~~board~~] revokes the license, the former license holder must reapply in order to obtain a new license. The department [~~board~~] will not issue a new license until the department [~~board~~] determines that the reasons for revocation have been removed. The department [~~board~~] may require an investigation and a recommen-

dation from the executive secretary to assist the department [board] in making its decision.

(6) Upon revocation, the former license holder shall return the license certificate and license identification card to the department [board].

(7) The department [board] may assess administrative penalties for a violation of the Act or this chapter in accordance with the procedures established in Occupations Code, §§603.501 - 603.511.

(f) Surrender of license.

(1) A licensee may offer his or her license for surrender to the department [board] office. The executive secretary will notify the licensee that the license has been received.

(2) - (3) (No change.)

(g) Monitoring of licensees. The executive secretary shall monitor each licensee against whom a department [board] order is issued to ascertain that the licensee performs the required acts.

(h) Cease and Desist Order. If it appears to the commissioner that a person who is not licensed under the Act is violating the Act, a rule adopted under the Act, or another state statute or rule relating to the practice of perfusion, the commissioner after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity. A violation of an order under this subsection constitutes grounds for the imposition of an administrative penalty by the department.

§140.16. Formal Hearings.

(a) General. This section covers the formal hearing procedures and practices that will be used by the department [board] in handling suspensions, revocation of license, denial of licenses, probating a license suspension, [and] reprimanding a licensee, or to refusal to renew a license. Such hearing will be conducted pursuant to the contested case provisions of the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and will be held by the State Office of Administrative Hearings.

(b) Notice requirements.

(1) - (3) (No change.)

[(c) Parties to the hearing.]

[(1) The parties to the hearing shall be the applicant or licensee and the complaints committee or executive secretary, as appropriate.]

[(2) A party may appear personally or be represented by counsel or both.]

[(d) Assessing the cost of a court reporter and the record of the hearing.]

[(1) In the event a court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter.]

[(2) The board may prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The board may pay the cost of the transcript or assess the cost to one or more parties.]

[(3) In the event a final decision of the board is appealed to the district court wherein the board is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the board may require the appealing party to pay all or part of the cost of preparation of the original or a certified copy of the record of the board proceedings that is required to be transmitted to the reviewing court.]

(c) [(e)] Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.

(d) [(f)] Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(e) [(g)] Final orders or decisions.

(1) The final order or decision will be rendered by the department [board]. The department [board] is not required to adopt the recommendation of an administrative law judge and may take action as it deems appropriate and lawful.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(3) All final orders shall be signed by a representative of the department [the executive secretary and the chairman of the board; however, interim orders may be issued by the administrative law judge].

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

[(h) Motion for rehearing. A motion for rehearing shall be governed by APA, Texas Government Code, §2001.146, and shall be addressed to the board and filed with the executive secretary.]

[(i) Appeals. All appeals from final board orders or decisions shall be governed by APA, Subchapter G, Texas Government Code and communications regarding any appeal shall be to the executive secretary.]

§140.17. Informal Conference.

(a) (No change.)

(b) If the department [executive secretary or a member of the complaint committee of the board] determines that the public interest might be served by attempting to resolve a complaint or contested case by an agreed order in lieu of a formal hearing, the provisions of this section shall apply. A licensee or applicant may request an informal conference; however, the decision to hold a conference shall be made by the department [executive secretary or the complaint committee].

(c) (No change.)

(d) The department [executive secretary] shall decide upon the time, date, and place of the informal conference and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than ten days prior to the date of the conference by certified mail, return receipt requested to the last known address of the licensee or applicant or by personal delivery. The 10 days shall begin on the date of mailing or personal delivery. The licensee or applicant may waive the 10 day notice requirement.

(1) (No change.)

(2) A copy of this subsection [the board's rules] concerning informal disposition shall be enclosed with the notice of the informal conference.

[(e) The notice of the informal conference shall be sent by certified mail, return receipt requested, to the complainant at his or her last known address or personally delivered to the complainant. The complainant shall be informed that he or she may appear and testify or may submit a written statement for consideration at the informal conference. The complainant shall be notified if the conference is canceled.]

[(f) A member of the complaint committee may be present at an informal conference.]

(e) [(g)] The conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(f) [(h)] The licensee, the licensee's attorney, and department [board] staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(g) [(i)] The department's [board's] legal counsel will be requested to attend each informal conference. The complaint committee member or executive secretary may call upon the department's [board] attorney at any time for assistance in the informal conference.

(h) [(j)] The licensee shall be afforded the opportunity to make statements that are material and relevant.

(i) [(k)] Access to the department's [board's] investigative file may be prohibited or limited in accordance with the APA, Texas Government Code, Chapter 552, and the Texas Occupations Code, Chapter 603.

(j) [(l)] At the discretion of the department [executive secretary or the committee members], a tape recording may be made of none or all of the informal conference.

(k) [(m)] The complainant shall not be considered a party in the informal conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(l) [(n)] At the conclusion of the informal conference, the department [executive secretary] may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act. The department [executive secretary] may also conclude that the department [board] lacks jurisdiction, conclude that a violation of the Act or this chapter has not been established, or refer the matter for further investigation.

(m) [(o)] At the time of the informal conference, the licensee or applicant may either accept or reject the conference recommendations. If the recommendations are accepted, an agreed order shall be prepared by the department [board office] or the department's [board's] legal counsel and forwarded to the licensee or applicant. The order shall contain agreed finding of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the department [board office] within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the conference recommendations.

(n) [(p)] If the licensee or applicant rejects the proposed recommendations, the department shall take [matter shall be referred to the executive secretary for] appropriate action.

(o) [(q)] If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the legal counsel [entire board] for [its] approval. The order shall contain agreed findings of fact and conclusions of law. [Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.]

[(r) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.]

(p) [(s)] After consultation with legal counsel, the department [Upon an affirmative majority vote, the board] shall enter an agreed order approving the accepted recommendations. [The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.]

(q) [(t)] If the department [board] does not approve a proposed agreed order, the licensee or applicant [and the complainant] shall be so informed. The department shall take [matter shall be referred to the executive secretary for] other appropriate action.

(r) [(u)] A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the Texas Government Code, §2001.054(c).

(1) If the department [executive secretary or complaints committee] determines that an informal conference shall not be held, the department [executive secretary] shall give written notice to the licensee or applicant of the facts or conduct alleged to warrant the intended disciplinary action and the licensee or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Act and this chapter.

(2) The complainant shall be sent a copy of the written notice described in paragraph (1) of this subsection. The complainant shall be informed that he or she may also submit a written statement to the department [board].

(s) Refund Order. The department may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty. The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by the Act and this section. The department may not require payment of other damages or estimate harm in a refund order.

§140.18. Default Orders.

[(a)] If a right to a hearing is waived, the department [board] shall enter [consider] an order taking appropriate disciplinary action against the licensee as described in the written notice to the licensee or applicant.

[(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.]

[(c) Upon an affirmative majority vote, the board shall enter an order taking appropriate action.]

§140.19. Suspension of License for Failure to Pay Child Support or Compliance with Child Custody Order.

(a) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or failure to be in compliance with a court order relating to child custody, the department [executive secretary] shall immediately determine if [the board

~~has issued~~] a license has been issued to the obligator named on the order. If a license has been issued, the department [~~executive secretary~~] shall:

(1) record the suspension of the license in the department's [~~board's~~] records;

(2) - (3) (No change.)

(b) The department [~~board~~] shall implement the terms of a final court order or attorney general's order suspending a license without additional review or hearing. The department [~~board~~] will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The department [~~board~~] may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232 as added by Acts 1995, 74th Legislature Chapter 751, §85 (HB 433) and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court order or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department [~~board~~].

(e) (No change.)

(f) An individual who continues to use the titles "licensed perfusionist", or "provisional licensed perfusionist" after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the department [~~board~~].

(g) On receipt of a court order or attorney general's order vacating or staying an order suspending a license, the department [~~executive secretary~~] shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee set out at §140.2 [~~§761.2~~] of this title (relating to Fees [~~The Board's Organization and Administration~~]) prior to issuance of the license under subsection (g) of this section.

§140.20. Relevant Factors.

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction which include: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the department [~~complaint committee~~] or administrative law judge. Specific factors are to be considered as set forth herein.

(1) (No change.)

(2) Nature of the violation. The following factors are identified:

(A) the relationship between the licensee and the person harmed, or exposed to harm[~~, such as a dependent relationship of a client-counselor, or stranger to the licensee~~];

(B) - (C) (No change.)

(D) the extent to which the violation evidences a [~~the~~] lack of character that could reasonably be assumed to affect the licensee's ability to safely or effectively engage in the practice of perfusion [~~, such as lack integrity, trustworthiness, or honesty~~].

(3) Personal accountability. The following factors are identified:

(A) (No change.)

(B) appropriate degree of [~~or~~] remorse or concern;

(C) - (E) (No change.)

(4) - (5) (No change.)

§140.21. Severity Levels [~~Level~~] and Sanctions [~~Sanction~~] Guide.

The following severity levels and sanctions [~~sanction~~] guides are based on the relevant factors in §140.20 [~~§761.20~~] of this title (relating to Relevant Factors).

(1) Level One--Revocation of license. These violations evidence intentional or gross misconduct on the part of the license, and/or cause or pose a high degree of harm to the public, and/or may require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never again regain licensure. In lieu of or in addition to revocation of license, the maximum administrative penalty of up to $5,000 per day a violation continues or occurs may be assessed for these violations.

(2) Level Two--Extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but may require termination of licensure for a period of not less than one year. In lieu of or in addition to extended suspension of license, a maximum administrative penalty of up to $3,000 per day a violation continues or occurs may be assessed for these violations.

(3) Level Three--Moderate suspension of license. These violations are less serious than Level Two violations, but may require termination of licensure for a period of time less than a year. In lieu of or in addition to moderate suspension of license, a maximum administrative penalty of up to $1,000 per day a violation continues or occurs may be assessed for these violations.

(4) Level Four--Probated suspension of licensure. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Probationary terms may be ordered as appropriate. In lieu of or in addition to probated suspension of license, a maximum administrative penalty of up to $500 per day a violation continues or occurs may be assessed for these violations.

(5) Level Five--Reprimand. These violations involve inadvertent or relatively minor misconduct and/or rule violations not directly involving the health, safety, and welfare of the public. In lieu of or in addition to the imposition of a reprimand, an administrative penalty of not less than $50 and up to $250 per day a violation continues or occurs may be assessed for these violations.

§140.22. Texas State Perfusionist Advisory Committee.

(a) Officers.

(1) The Presiding Officer shall be designated by the commissioner and serve at the pleasure of the commissioner.

(2) The Assistant Presiding Officer shall perform the duties of the presiding officer in case of the absence or disability of the chairman.

(3) In case the presiding officer becomes vacant, the assistant presiding officer shall serve until a successor is appointed by the commissioner.

(b) Meetings.

(1) The committee shall meet only to conduct committee business.

(2) Special meetings may be called by the commissioner at such times, dates, and places as become necessary for the transaction of advisory committee business.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, with the exception that the provisions allowing executive sessions shall not apply.

(c) Quorum. A simple majority of the committee members is necessary to conduct official business.

(d) Transaction of official business.

(1) The committee may transact official business only when in a legally constituted meeting with a quorum present.

(2) Committee action shall require a majority vote of those members present and voting.

(e) Policy against discrimination. The committee shall make no decision in the discharge of its statutory authority with regard to any person's race, color disability, gender, religion, national origin, geographical distribution, age, physical condition, economic status, sexual orientation, or genetic information.

(f) Conflict of interest. Any committee member who has a conflict of interest regarding any matter before the committee, such as a matter pertaining to an applicant's eligibility for licensure or a complaint against or a violation by a licensee, shall so declare this and shall not participate in any committee proceedings involving that individual or matter.

(g) Membership and employee restrictions.

(1) Texas trade association. A cooperative and voluntarily joined statewide association of business or professional competitors in this state designated to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(2) A person may not be a committee member and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposed of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (U.S.C. §201 et seq.) if:

(A) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(B) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(3) A person may not be a member of the committee or act as the general counsel to the committee or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(h) Attendance.

(1) Members shall attend regular committee meetings as scheduled.

(2) Upon request, the executive secretary shall report to the commissioner governor and the Texas Sunset Advisory Commission the attendance records of members.

(3) Except in case of emergency, committee members shall notify the presiding officer or executive secretary at least 48 hours prior to the scheduled meeting if unable to be present.

(4) Except in case of emergency, the executive secretary shall notify the presiding officer at least 48 hours prior to the scheduled meeting if unable to be present.

(5) It is grounds for removal from the committee if a member is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

(i) Reimbursement for expense. A member is entitled to reimbursement for expenses as provided by the General Appropriations Act.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(j) Rules of order. The latest edition of Roberts Rules of Order shall be the basis of parliamentary decisions except where otherwise provided by these committee rules.

(k) Agendas.

(1) The executive secretary shall prepare and submit to each member of the committee, prior to each meeting, an agenda which includes items requested by members, items required by law, unfinished business, and other matters of committee business which have been approved for discussion by the presiding officer.

(2) The official agenda of a meeting shall be filed with the Texas Secretary of State in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

(l) Minutes.

(1) Drafts of the minutes of each meeting shall be forwarded to each member of the committee for review and comments prior to approval by the committee.

(2) After approval by the committee, the minutes of any committee meeting are official only when affixed with the original signatures of the presiding officer and the executive secretary and official seal of the committee.

(3) The official minutes of committee meetings shall be kept in the office of the executive secretary and shall be available to any person desiring to examine them during regular office hours.

(m) Official records.

(1) All official records of the committee including application materials, except files containing information considered confidential under the provisions of the Texas Open Records Act, Texas Government Code, Chapter 552, shall be open for inspection during regular office hours.

(2) Official records may not be taken from committee offices; however, persons may obtain photocopies of files upon written

request and by paying the cost per page set by the department. Payment shall be made prior to release of the records.

(n) Official seal. The commissioner shall adopt an official seal for use in the course of official committee business as authorized by the Act. §603.151(5).

(o) Registry.

(1) The department shall prepare a registry of licensed perfusionists and provisionally licensed perfusionists that is available to the public, license holders, and appropriate state agencies.

(2) The registry shall include, but not be limited to, the names of current licensees.

(3) An original copy of the registry will be available for inspection by licensees and members of the public in the office of the executive secretary.

(p) Public interest information.

(1) The department shall prepare information of consumer interest describing the profession of perfusion, the regulatory functions of the department, and the procedures by which consumer complaints are filed with and resolved by the department.

(2) The department shall make the information available to the public and appropriate state agencies.

(q) Executive secretary powers and duties. In addition to performing other duties prescribed by this section and by the department, the executive secretary shall:

(1) administer licensing activity for the department;

(2) keep full and accurate minutes of the committee's transactions and proceedings;

(3) serve as custodian of the committee's files and other records;

(4) prepare and recommend to the department plans and procedures necessary to implement the objectives of this chapter, including rules and proposals on administrative procedure;

(5) exercise general supervision over persons employed by the department in the administration of this chapter;

(6) investigate complaints and present formal complaints;

(7) attend all committee meetings as a nonvoting participant;

(8) handle the committee's correspondence; and

(9) obtain, assemble, or prepare reports and other information as directed or authorized by the committee.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 5, 2005.

TRD-200505591
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 458-7236

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25 TAC §140.2, §140.6

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The proposed repeals are authorized by Texas Occupations Code, Chapter 603; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed repeals affect the Occupations Code, Chapter 603, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§140.2. The Board's Organization and Administration.

§140.6. Procedures and Criteria for Exemptions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 5, 2005.

TRD-200505592
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 458-7236

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 39. PUBLIC NOTICE

SUBCHAPTER H. APPLICABILITY AND GENERAL PROVISIONS

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§39.403, 39.411, 39.419, and 39.420, the repeal of §39.404, and new §39.404.

Certain provisions of the rules will constitute a revision to the state implementation plan (SIP) and will be submitted to the United States Environmental Protection Agency (EPA), specifically, §39.403(b)(8) - (10) and new (f), the repeal of §39.404, and new §39.404. The commission also proposes to withdraw §§39.411, 39.419, and 39.420 as submitted to EPA on July 31, 2002, and proposes to submit §§39.411(a), (b)(1) - (6), (8) - (10), (c)(1) - (6), and (d); 39.419(a), (b), (d), and (e); and 39.420(a), (b), and (c)(3) and (4) as a revision to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 2201, passed by the 79th Legislature, 2005, directs the commission to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. In HB 2201, the legislature concluded in its findings that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and that streamlining the permitting process for FutureGen projects would serve the public's interest by improving the state's ability to compete for federal funding for FutureGen projects. A specific requirement of HB 2201 is that FutureGen permit applications shall not be subject to a contested case hearing. Under these proposed rules, the eligible permit applications for FutureGen projects will be subject to the same permitting and public participation processes that would otherwise apply to applications for most types of commission permits, except for contested case hearings. Other portions of HB 2201 reflected in the proposed rules define relevant terms, establish an emissions profile, and clarify jurisdiction issues between TCEQ and the Railroad Commission of Texas. Much of the content of the proposed rules originates from new Texas Health and Safety Code (THSC), §382.0565, Clean Coal Project Permitting Procedure, and new Texas Water Code (TWC), §5.558 and §27.022, which were created by HB 2201.

The purpose of the proposed revisions to Chapter 39 is to implement the requirements of HB 2201 with respect to the public notice requirements of permit applications required to authorize a component of the FutureGen project. Because HB 2201 eliminates contested case hearings on applications for permits required to authorize a component of the FutureGen project, public notice requirements for these applications need to be modified to reflect that the applications are not subject to contested case hearings. The proposed revisions include a reference to the new 30 TAC Chapter 91 that establishes the streamlined process for applications required to authorize a component of the FutureGen process. The proposed rules concerning the FutureGen project do not include an expiration date or sunset date, but the commission specifically requests comment on whether an expiration date or sunset date is necessary.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout the proposed rules to be consistent with Texas Register requirements and agency guidelines.

§39.403. Applicability.

The commission proposes an amendment to §39.403 by adding a new subsection (f) stating that applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in the concurrently proposed §91.30, Definitions, are subject to the public notice requirements of concurrently proposed new Chapter 91, Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities, in addition to the requirements of this chapter, unless otherwise specified in Chapter 91. For most types of applications, the notice requirements in proposed new Chapter 91 will use existing notice requirements for the type of application sought, except to modify the text of the notice to indicate that the application is for authorization of a component of the FutureGen project and is not subject to a contested case hearing.

§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities.

The commission proposes the repeal of §39.404 and proposes to replace it with a new §39.404.

§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities.

The commission proposes new §39.404 that includes applicability requirements for certain designated projects, specifically applications submitted under Chapter 116, concurrently proposed new Subchapter L, Permits for Specific Designated Facilities.

§39.411. Text of Public Notice.

The commission proposes an amendment to §39.411 to specify in subsection (b)(10)(B) that notice for applications submitted under §39.404(b) only require a statement that any person is entitled to request a notice and comment hearing from the commission.

§39.419. Notice of Application and Preliminary Decision.

The commission proposes an amendment to §39.419 by adding a new paragraph (4) to subsection (e) to specify that applications to construct, authorize, or operate a component of the FutureGen project as defined in the concurrently proposed §91.30, Definitions, shall be subject to the public notice and participation requirements stated in Chapter 116, concurrently proposed new Subchapter L.

§39.420. Transmittal of the Executive Director's Response to Comments and Decision.

The commission proposes an amendment to §39.420 by adding a new subsection (f), to specify that the chief clerk shall not be required to transmit the item listed in §39.420(a)(4), concerning instructions for requesting a contested case hearing, for permit applications under Chapter 116, concurrently proposed new Subchapter L.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period that the proposed rulemaking is in effect, no fiscal implications are anticipated for the agency or other units of state or local government. Any entities wishing to be permitted under the proposed rulemaking may experience some cost savings due to a streamlined permitting process.

The proposed rulemaking implements HB 2201. HB 2201 directs the agency to establish by rule, streamlined permitting procedures for FutureGen projects. FutureGen refers to a combination of technologies for carbon sequestration, carbon dioxide enhanced oil recovery, electric generation, and hydrogen production. FutureGen is a technology demonstration project that is a partnership between industry participants and the United States Department of Energy. The legislature determined that this technology demonstration project could result in major economic, social, and environmental benefits for Texas, and determined that streamlining the permitting process for FutureGen projects would serve the public interest by improving the state's ability to compete for federal funding for FutureGen projects.

At this time, there have been no permits issued by the agency for FutureGen projects. It is anticipated that there may be one entity in the state that may apply for such a permit in the future. As the

proposed rulemaking would eliminate the contested case hearing process for specific projects and does not impose any new requirements for the agency, there may be minor cost savings to TCEQ and the State Office of Administrative Hearings due to the reduction in the number of any contested case hearings.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rulemaking is in effect, the public benefit anticipated from the changes due to the proposed rules will be compliance with state law and improving the state's ability to compete for federal funding for FutureGen projects. These projects are anticipated to result in the development of cleaner sources of power to meet energy demands.

The proposed rulemaking may result in some reduced costs for eligible industry projects, but in general any cost savings are not expected to be significant.

The proposed rulemaking is expected to only apply to one project at the current time. The project involves a variety of equipment used for power generation, hydrogen production, and carbon dioxide sequestration. This equipment may include bulk fuel handling equipment, gasifiers, reactors, separators, turbines, sulfur recovery units, and emission control equipment. Industry projects eligible for the proposed rulemaking would no longer be subject to a contested case hearing.

The elimination of contested case hearings may reduce travel costs for applicants, and may result in reduced administrative or professional costs that would have been incurred by the applicant to prepare for a contested case hearing.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. Small or micro-businesses are not expected to apply for permits for FutureGen projects, but if they do, they would experience the same cost savings as large businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are intended to establish notice requirements for authorizing certain types of projects required for the FutureGen project. The proposed rules are only procedural rules establishing public notice requirements to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The proposed rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225 definition of "major environmental rule."

Furthermore, the proposed rulemaking does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a), only applies to a major environmental rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these applicability requirements. First, the proposed rules are consistent with and do not exceed the standards set by federal law. Second, the proposed rules do not exceed an express requirement of state law, instead these rules implement HB 2201. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not propose these rules solely under the general powers of the agency, but rather under the authority of THSC, §382.0565, as added by HB 2201, which directs the commission to by rule implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; TWC, §5.558, as amended by HB 2201, which directs the commission to implement reasonably streamlined processes for issuing permits required to construct a component of a FutureGen project, as authorized by federal law; and TWC, §27.022, as added by HB 2201, which establishes the commission's jurisdiction over the injection of carbon dioxide produced by a clean coal project to the extent authorized by federal law.

Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this proposed rulemaking and performed a preliminary assessment of whether this rulemaking would constitute a takings under Texas Government Code, Chapter 2007. The proposed rules are intended to establish a streamlined process for authorizing certain types of projects required for the FutureGen project. The proposed rules are only procedural rules establishing a system to administer the program for permitting FutureGen projects and are not specifically intended to protect the environment or to reduce risks to human health. The proposed rules are intended to provide an alternative mechanism for public participation and do not alter the underlying technical review requirements. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's

right to the property that would otherwise exist in the absence of the governmental action. Consequently, this proposal does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the proposed rules will not constitute a takings under Texas Government Code, Chapter 2007. The commission invites public comment on this preliminary takings impact assessment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed revisions include procedural mechanisms to authorize new sources of air contaminants; however, the proposed revisions do not create any new types of authorizations for new sources of air contaminants. The CMP policy applicable to this rulemaking is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking is consistent with CMP goals and policies. The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

FutureGen projects may or may not be subject to the Federal Operating Permits Program depending on the quantity and type of their emissions and their location. If subject, facilities will be required to meet all requirements of the Federal Operating Permits Program.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on December 20, 2005, at 10:00 a.m. in Building B, Room 201A, at the TCEQ's complex, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-053-091-PR. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. Comments must be received by 5:00 p.m., December 27, 2005. For further information, please contact Michael Wilhoit, Air Permits Division, at (512) 239-1222.

30 TAC §§39.403, 39.404, 39.411, 39.419, 39.420

STATUTORY AUTHORITY

The amendments and new section are proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The proposed amendments and new section are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, concerning preconstruction permits; §382.056, concerning notice of intent to obtain permit or permit review and hearing; and §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The proposed amendments and new section implement TWC, §5.558(c) and THSC, §382.0565(d).

§39.403. Applicability.

(a) (No change.)

(b) As specified in those subchapters, Subchapters H - M of this chapter apply to notices for:

(1) - (7) (No change.)

(8) applications for air quality permits under THSC, §382.0518 and §382.055. In addition, applications for permit amendments under §116.116(b) of this title (relating to Changes to Facilities), initial issuance of flexible permits under Chapter 116, Subchapter G of this title (relating to Flexible Permits), amendments to flexible permits under §116.710(a)(2) and (3) of this title (relating to Applicability) when an action involves:

(A) construction of any new facility as defined in §116.10 [~~§116.10(4) and (10)~~] of this title (relating to General Definitions);

(B) modification of an existing facility as defined in §116.10 [~~§116.10(9)~~] of this title which result in an increase in allowable emissions of any air contaminant emitted equal to or greater than the emission quantities defined in §106.4(a)(1) of this title (relating

to Requirements for [~~Exemptions from~~] Permitting by Rule) and of sources defined in §106.4(a)(2) and (3) of this title; or

(C) (No change.)

(9) applications subject to the requirements of Chapter 116, Subchapter C of this title (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR [~~Code of Federal Regulations~~] Part 63)), whether for construction or reconstruction;

(10) concrete batch plants registered under Chapter 106 of this title (relating to Permits by Rule [~~Exemptions from Permitting~~]) unless the facility is to be temporarily located in or contiguous to the right-of-way of a public works project;

(11) - (14) (No change.)

(c) Notwithstanding subsection (b) of this section, Subchapters H - M of this chapter do not apply to the following actions and other applications where notice or opportunity for contested case hearings are otherwise not required by law:

(1) - (3) (No change.)

(4) applications under Chapter 122 of this title (relating to Federal Operating Permits Program);

(5) - (15) (No change.)

(d) Applications for initial issuance of voluntary emission reduction permits under THSC, §382.0519 and initial issuance of electric generating facility permits under Texas Utilities Code, §39.264 are subject only to §39.405 of this title (relating to General Notice Provisions), §39.409 of this title (relating to Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing), §39.411 of this title, §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit), §39.602 of this title (relating to Mailed Notice), §39.603 of this title (relating to Newspaper Notice), §39.604 of this title (relating to Sign-Posting), §39.605 of this title (relating to Notice to Affected Agencies), and §39.606 of this title (relating to Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply. For MPP applications filed before September 1, 2001, the initial issuance, amendment, or revocation of MPPs under THSC, §382.05194 is subject to the same public notice requirements that apply to initial issuance of voluntary emission reduction permits and initial issuance of electric generating facility permits, except as otherwise provided in §116.1040 of this title (relating to Multiple Plant Permit Public Notice and Public Participation).

(e) (No change.)

(f) Applications for permits, registrations, licenses, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), are subject to the public notice requirements of Chapter 91 of this title (relating to Alternative Public Notice and Public Participation Requirements for Specific Designated Facilities) in addition to the requirements of this chapter, unless otherwise specified in Chapter 91 of this title.

§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities.

(a) Initial applications for air quality permits for grandfathered facilities.

(1) With the exception of §39.403(a)(1) of this title (relating to Applicability), Subchapters H - M of this chapter (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; Public Notice of Water Quality Applications and Water Quality Management Plans; Public Notice of Air Quality Applications; Public Notice of Injection Well and Other Specific Applications; and Public Notice for Radioactive Material Licenses) also apply to:

(A) applications for permits for electric generating facilities under Texas Health and Safety Code, §382.05185(c) and (d);

(B) applications for existing facilities permits under Texas Health and Safety Code, §382.05183; and

(C) applications for pipeline facility permits under Texas Health and Safety Code, §382.05186.

(2) Applications for initial issuance of permits under Texas Health and Safety Code, §§382.05183, 382.05185(c) and (d), and 382.05186 are subject only to §§39.401, 39.405, 39.407, 39.409, 39.411, 39.418, 39.420, and 39.601 - 39.606 of this title (relating to Purpose; General Notice Provisions; Mailing Lists; Deadline for Public Comment, and for Requests for Reconsideration, Contested Case Hearing, or Notice and Comment Hearing; Text of Public Notice; Notice of Receipt of Application and Intent to Obtain Permit; Transmittal of the Executive Director's Response to Comments and Decision; Applicability; Mailed Notice; Newspaper Notice; Sign-Posting; Notice to Affected Agencies; and Alternative Means of Notice for Permits for Grandfathered Facilities), except that any reference to requests for reconsideration or contested case hearings in §39.409 or §39.411 of this title shall not apply.

(b) Applications for permits for specific designated facilities.

(1) With the exception of §39.403(a)(1) of this title, Subchapters H - M of this chapter also apply to applications for permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

(2) Applications for permits under Chapter 116, Subchapter L of this title are subject only to §§39.401, 39.405, 39.407, 39.409, 39.411, 39.418, 39.420, and 39.601 - 39.605 of this title, except that any reference to contested case hearings shall not apply.

§39.411. Text of Public Notice.

(a) (No change.)

(b) When notice of receipt of application and intent to obtain permit by publication or by mail is required by Subchapters H - L of this chapter (relating to Applicability and General Provisions, Public Notice of Solid Waste Applications, Public Notice of Water Quality Applications and Water Quality Management Plans, Public Notice of Air Quality Applications, and Public Notice of Injection Well and Other Specific Applications), Subchapter G of this chapter (relating to Public Notice for Applications for Consolidated Permits), or for Subchapter M of this chapter (relating to Mailed Notice for Radioactive Material Licenses), the text of the notice must include the following information:

(1) - (3) (No change.)

(4) a brief description of public comment procedures, including:

(A) (No change.)

(B) a statement in the notice for any permit application for which there is an opportunity for a contested case hearing, that only disputed factual issues that are relevant and material to the commissions's decision that are raised during the comment period can be considered if a contested case hearing is granted; [~~,~~]

(5) - (9) (No change.)

(10) for notices of air applications:

(A) at a minimum, a listing of criteria pollutants for which authorization is sought in the application which are regulated under national ambient air quality standards (NAAQS) or under state standards in Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter, Control of Air Pollution from Sulfur Compounds, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants [~~Control of Air Pollution from Toxic Materials~~], Control of Air Pollution from Volatile Organic Compounds, and Control of Air Pollution from Nitrogen Compounds);

(B) if notice is for applications described in §39.403(b)(11) or (12) of this title (relating to Applicability)[~~,~~] or §39.404(b) [~~§39.404~~] of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities), a statement that any person is entitled to request a notice and comment hearing from the commission. If notice is for any other air application, the following information [~~which~~] must be printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice:

(i) - (iii) (No change.)

(iv) [~~and~~] that only relevant and material issues raised during the comment period can be considered if a contested case hearing request is granted; [~~and~~]

(C) notification that a person residing within 440 yards of a concrete batch plant under an exemption from permitting or permit by rule adopted by the commission is an affected person who is entitled to request a contested case hearing; and

(D) the statement: "The facility's compliance file, if any exists, is available for public review in the regional office of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality;" and

(11) - (13) (No change.)

(14) for Class 3 modifications of hazardous industrial solid waste permits, the statement "The permittees compliance history during the life of the permit being modified is available from the agency contact person."

(c) Unless mailed notice is otherwise provided for under this section, the chief clerk shall mail Notice of Application and Preliminary Decision to those listed in §39.413 of this title (relating to Mailed Notice). When notice of application and preliminary decision by publication or by mail is required by Subchapters G - L of this chapter, the text of the notice must include the following information:

(1) - (3) (No change.)

(4) a summary of the executive director's preliminary decision and whether the executive director has prepared a draft permit; [~~and~~]

(5) (No change.)

(6) the deadline to file comments or request a public meeting. The notice should include a statement that a public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the facility is to be located or there is substantial public interest in the proposed activity; and

(7) for radioactive material licenses under Chapter 336 of this title [~~(relating to Radioactive Substance Rules)~~], if applicable, a statement that a written environmental analysis on the application has been prepared by the executive director, is available to the public for review, and that written comments may be submitted.

(d) When notice of a public meeting or notice of a hearing by publication or by mail is required by Subchapters G - L of this chapter, the text of the notice must include the following information:

(1) (No change.)

(2) the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures; and

(3) (No change.)

§39.419. Notice of Application and Preliminary Decision.

(a) - (c) (No change.)

(d) The notice must include the information required by §39.411(c) of this title (relating to Text of Public Notice).

(e) For air applications the following apply. [~~:~~]

(1) The applicant is not required to publish Notice of Application and Preliminary Decision, if:

(A) - (C) (No change.)

(D) the application is for initial issuance of a permit described in §39.403(b)(11) or (12) of this title (related to Applicability) or §39.404 of this title (relating to Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities and for Applications for Permits for Specific Designated Facilities);

(2) If notice under this section is required, the agency shall mail notice according to §39.602 of this title (relating to Mailed Notice). [~~; and~~]

(3) (No change.)

(4) If the applicant is seeking authorization by permit, registration, license, or other type of authorization required to construct, operate, or authorize a component of the FutureGen project as defined in §91.30 of this title (relating to Definitions), that application shall be subject to the public notice and participation requirements in Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities).

§39.420. Transmittal of the Executive Director's Response to Comments and Decision.

(a) - (e) (No change.)

(f) For applications for permits under Chapter 116, Subchapter L of this title (relating to Permits for Specific Designated Facilities), the chief clerk shall not be required to transmit the item listed in subsection (a)(4) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 30, 2005.

TRD-200505525
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 239-5017

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30 TAC §39.404

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under TWC, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.0518, concerning preconstruction permits; §382.056, concerning notice of intent to obtain permit or permit review and hearing; and §382.0565, concerning clean coal project permitting procedure; and TWC, §5.558, concerning clean coal project permitting.

The proposed repeal implements TWC, §5.558(c) and THSC, §382.0565(d).

§39.404. Applicability for Certain Initial Applications for Air Quality Permits for Grandfathered Facilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 30, 2005.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§114.6, 114.312, 114.313, and 114.315 - 114.318.

The amended sections are proposed to be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On March 9, 2005, the commission adopted revisions to the low emission diesel fuel (LED) rules (§§114.312 - 114.319) and submitted those amendments as a SIP revision to the EPA on March 23, 2005. Subsequently, EPA raised concerns with certain provisions of §114.315 that give the state unilateral authority to accept alternative methods of compliance. Specifically, EPA stated that §114.315(b) and (c)(4)(C)(ii)(V) was problematic in regard to EPA's approval of the rules and SIP revision.

On July 5, 2005, the executive director of the TCEQ (ED) wrote to the EPA's Region 6 director, Mayor Greene, and requested that EPA proceed with its review of the SIP submittal, excluding the problematic provisions of §114.315, and stated that the commission would address these provisions in a future rulemaking. On August 10, 2005, the EPA published a notice of proposed rulemaking in the *Federal Register* (70 FR 46448), proposing to approve revisions to the SIP relating to changes to the Texas Low-Emission Diesel Fuel (TxLED) Program. In the *Federal Register* notice, the EPA proposed to approve §114.315 excluding the provisions of §114.315 as the ED had requested. On October 6, 2005, the EPA published a final rule in the *Federal Register* (70 FR 58325), approving the SIP revision submitted by the State of Texas making changes to the TxLED Program, again excluding the provisions of §114.315 as the ED had requested. The commission is proposing in this rulemaking to make revisions to the provisions of the LED rules that EPA has excluded from its approval. This proposed rulemaking would make changes to §114.315(b) so that EPA would be consulted before the ED determines to approve an alternative test method and remove §114.315(c)(4)(C)(ii)(V).

These proposed rules would also address issues raised by EPA regarding its consideration of alternative emission reduction plans that have been submitted to the commission for compliance with the LED rules as allowed under §114.318. Under the current rules, the alternative emission reduction plans must be approved by both the commission and EPA. The ED has approved 17 alternative emission reduction plans to date. The EPA determined that the commission must submit the alternative emission reduction plans for its review and consideration in the form of a SIP revision, requiring public review of each alternative emission reduction plan. However, many of these alternative emission reduction plans are considered to be confidential business information by the diesel fuel producers that submitted these plans. In addition, under this approval method, the commission would be required to submit a new SIP revision any time a producer amended its alternative emission reduction plan. This proposed rulemaking would make changes to §114.318 to establish a method and process, or protocol, by which all alternative emission reduction plans could be approved by the commission and EPA without the need for a SIP revision for each individual plan. The ED notified all holders of currently approved alternative emission reduction plans of the commission's intention to develop a new protocol by which these plans must demonstrate equivalent reductions in the emissions of oxides of nitrogen (NO_x) in order to maintain commission approval and gain EPA approval. The ED also indicated that the proposed rules may impact the approvability of some fuel strategies in these currently approved plans; however, the commission believes that the protocol will provide mechanisms for compliance that allow producers to maintain a majority of the strategies in their plans. Under this proposal, ED approval of all currently approved alternative emission reduction plans will expire December 31, 2006. Under the proposed changes to §114.318, any producers wishing to use the alternative emission reduction plan approach for compliance with the LED rules will be required to submit an alternative emission reduction plan that demonstrates under the new protocol that their fuel strategies will achieve NO_x emission reductions equivalent to, or better than, those reductions attributed to the use of LED. The

commission believes that a December 31, 2006 expiration date provides an appropriate amount of time for producers to submit an alternative emission reduction plan that would be approvable under the new protocol.

On October 14, 2005, the commission held a stakeholder meeting at its Austin headquarters to solicit feedback on a draft replicable protocol for state and federal approval of alternative emission reduction plans. All of the comments received by the commission as a result of this meeting were considered during the preparation of this proposed rulemaking. Comments received from the stakeholder meeting will not be considered formal comments for the purposes of this rulemaking.

The LED amendments adopted on March 9, 2005, contained changes that included section restructuring, which require revisions to other sections of Subchapter H, Division 2 that were not modified in that rulemaking in order to correct citation references for consistency and accuracy. This proposed rulemaking would make changes to §114.313, Designated Alternative Limits, and §114.317, Exemptions to Low Emission Diesel Requirements, to address corrections that are needed to accurately cite rule references.

The commission is also proposing to make changes to the LED rules concerning the testing requirements for the approval of alternative diesel fuel formulations specified in §114.315 that are needed for procedure clarification and for consistency with testing procedures and guidance approved by the EPA and the regulations adopted by the California Air Resource Board (CARB) from which the LED rules were initially patterned. The EPA has requested that the commission make changes to these testing requirements to ensure the consistency and accuracy of emission testing results that would be used by the commission to determine approval of an alternative diesel fuel formulation for compliance with LED requirements. The proposed changes would also apply to the testing of diesel fuel additive- based formulations.

SECTION BY SECTION DISCUSSION

Administrative changes are proposed throughout the rules to be consistent with *Texas Register* requirements and agency guidelines.

The proposed changes to §114.6 would amend the definition of additive to clarify that substances that are required to be approved by and registered with the EPA are also considered to be additives under these rules, even if the EPA action has not occurred. In addition, the definition of additive will no longer reference the exclusion of an additive composed solely of carbon and/or hydrogen because this exclusion is already provided under 40 Code of Federal Regulations (CFR) Part 79 as it relates to fuel additive registration requirements. Also, the proposed changes would amend the definitions of final blend and low emission diesel (LED) for consistency relating to the acronym for LED and the definition of gasoline for accuracy in citing the reference to the American Society for Testing and Materials (ASTM) standard.

The proposed changes to §114.312(f) would remove volatile organic compounds (VOCs) from the comparison requirements that are needed for consistency with the proposed changes to §114.315(c)(5) as described in the paragraph concerning changes to §114.315. Diesel engines emit very little VOC emissions and therefore, their contribution to total VOC emissions inventories is very small as well. In addition, since test data from alternative diesel fuel formulation approval testing has demonstrated that VOC emissions from the engines being tested on both the reference fuel and candidate fuels are significantly below the EPA's emission certification standards for these test engines, there is no additional benefit in comparing VOC emissions when determining whether an alternative formulation can achieve NO_x emission reductions that are comparable to those attributed to LED in the SIP.

The proposed changes to §114.313 would amend references to other sections of Subchapter H, Division 2, as needed for accuracy and consistency.

The proposed changes to §114.315(a) would specify the correlation equation to be used with ASTM Test Method D5186 (Standard Test Method for Determination of Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography) to convert the supercritical fluid chromatography (SFC) results in mass percent to volume percent. The proposed changes to §114.315(b) would require the ED to consult with the EPA before approving an alternative to the test methods listed under §114.315(a) in response to EPA's comments relating to ED approval without EPA review.

The proposed changes to §114.315(c) would amend the procedures and testing requirements for alternative diesel fuel formulations to clarify what information is required to be submitted as part of the test protocol; specify that the sulfur content of the candidate fuel must not exceed 15 parts per million; clarify how many hot start emission test cycles will be required for each hot start only alternative test sequence; and remove the Alternative 5 test sequence in response to EPA's comments relating to ED approval without EPA review. These proposed changes would also require that the engine used for the testing have a minimum of 125 hours of use and exhibit stable operation before beginning the testing and be within 110% of the applicable emission standards when tested on the reference fuel. This change is needed to be consistent with the testing procedures and guidance approved for EPA's Environmental Technology Verification (ETV) Program. The proposed changes to §114.315(c)(5) would only require that the NO_x and particulate matter (PM) emissions of the reference and candidate fuels be compared when determining whether an alternative diesel fuel formulation is comparable or better than LED. This change is needed for consistency with the CARB regulations for approving alternative diesel fuel formulations since CARB-approved formulations are acceptable under §114.312(e). In addition, these changes would also require that the average individual emissions of total hydrocarbons (THC) and non-methane hydrocarbons (NMHC), respectively, recorded during testing with the candidate fuel not exceed 110% of the test engine's applicable exhaust emission standards in order to prevent unacceptable increases in VOC emissions. The proposed changes to §114.315(c)(6) are needed for consistency with the approval notification provisions in §114.315(d). The proposed changes to §114.315(d) to remove THC and NMHC from the comparison requirements are needed for consistency with the proposed changes to §114.315(c)(5).

The commission is requesting comments on whether additional "no-harm" testing should be required as part of the alternative diesel fuel formulation approval process to provide assurance that approved fuels and fuel additives are not harmful to the mechanical operation of diesel engines and what test protocols and/or test methods should be used if "no-harm" testing is required.

The proposed changes to §114.316(b) would clarify that only those records relating to sampling require a statement declaring

the appropriate aromatic hydrocarbon content standard of the fuel. The proposed changes to §114.316(k) would require producers who have alternative emission reduction plans approved under §114.318 to include information in their quarterly report that is required to be collected in accordance with the sampling and testing requirements of this subsection and to also include a reconciliation of the quarter's transactions relative to the requirements of this section for the appropriate fuel components of the diesel fuel that the projected emission reductions demonstrated in the producer's alternative emission reduction plan were based upon.

The proposed changes to §114.317 would amend references to other sections of this division as needed for accuracy and consistency.

The proposed changes to §114.318 would establish a protocol that producers must follow when developing alternative emission reduction plans to ensure that equivalent emission reductions are being achieved. These proposed changes would allow producers to submit alternative emission reduction plans using the EPA's Unified Model to demonstrate that the average of all on-road diesel fuel produced in any given calendar year that is sold, offered for sale, supplied, or offered for supply by the producer in the counties affected by these rules achieves at least a 5.5% reduction in NO_x emissions for the year 2007, and at least a 6.2% reduction from the average of all non-road diesel produced by the producer for use in the affected counties, equating to an average reduction of approximately 5.7% for both on-road and non-road diesel combined. Currently, a producer may use the Unified Model under §114.315(d) to demonstrate compliance using a specific fuel formulation. This proposed option would allow for averaging of different fuel formulations within the same geographic area.

In addition, the proposed changes to §114.318 would include procedures to allow alternative emission reduction plans to include diesel credits from early gasoline sulfur reduction that could be used in a 90-county area. The proposed diesel credits from early gasoline sulfur reductions would be calculated from the actual barrels of lower sulfur gasoline produced and supplied to the affected counties by the producer and the level of gasoline sulfur reduction by using specific offset ratios to determine the number of diesel credits. The proposed offset ratios were developed using the EPA MOBILE6 emissions model and calculating the percentage of emission reduction from varying the sulfur level of gasoline in 2003, 2004, and 2005, from the MOBILE6 default gasoline sulfur level assumptions for those years, then weighting the reduction percentages by vehicle type between the four classes of gasoline vehicles with catalysts. The proposed number of lower sulfur gasoline barrels needed to offset noncompliant diesel fuel was calculated by comparing the reduction percentages to the applicable emissions inventory of on- and off-road diesel fueled vehicles and equipment. The NO_x emission inventories change each year. However, the overall NO_x emissions inventory from on- and off-road diesel engines is always greater than just the on-road NO_x emissions inventory from gasoline engines. Therefore, in working out the appropriate offset ratio, the reductions in NO_x emissions from lower sulfur gasoline is discounted as a reflection of its smaller overall contribution to the inventory. Because gasoline credits would start to be used in 2007, the 2007 diesel NO_x emissions inventory is used and remains a constant for these calculations. The weighted average NO_x emissions reduction achieved by using LED in the on-road and non-road fleets in 2007 is 5.78%. For example, the gasoline NO_x emissions inventory in 2003 for the 90-county area was 229.51 tons per day. A reduction in sulfur of 25% achieves a 2.75% reduction in gasoline NO_x emissions. The 2007 on- and off-road diesel NO_x emissions inventory for the same 90-county area is 450.56 tons. To calculate the appropriate gasoline to diesel offset ratio the following equation can be used: the 2007 diesel inventory multiplied by the weighted average LED reductions in 2007 divided by the 2003 gasoline inventory multiplied by the 2003 MOBILE6 gasoline emission reduction associated with a 25% reduction in sulfur level, i.e., ((450.56)x(0.0578)) / ((229.51)x(0.0275)), which calculates an offset ratio of 4.12. Using this example, a producer that supplied gasoline with a 25% reduction in sulfur to the 90-county area in 2003 would be allowed to offset one barrel of noncompliant diesel fuel being supplied to the 90-county area in the years 2006 - 2010 for each 4.12 barrels of lower sulfur gasoline produced in 2003.

Also, the proposed changes to §114.318 would provide an option to calculate diesel credits from early gasoline sulfur reduction in certain counties when used in combination with a "cleaner" diesel fuel, calculated with the Unified Model from the average fuel properties of the diesel fuel supplied by the producer in the 90-county area, as part of the equation. If a producer is supplying a cleaner diesel fuel to the 90-county area, although not as clean as LED, the proposed rule would allow the producer to use the emission reduction calculated with the Unified Model to decrease the offset ratio of gasoline. For example, if a producer elects to produce a diesel fuel that achieves a 2.0% NO_x emissions reduction in 2007, the producer would calculate an offset ratio as follows: ((450.56)x(0.0578-0.02)) / ((229.51)x(0.0275)), for an offset ratio of 2.69. In this case, only 2.69 barrels of lower sulfur gasoline would be needed to offset each barrel of "cleaner" noncompliant diesel fuel.

Under this proposed rule, credits from early gasoline sulfur reduction can only be generated from the gasoline supplied by the producer in 2003, 2004, and 2005, to the counties listed under §114.319(b)(4) and these credits can only be used to demonstrate compliance through December 31, 2010. In addition, the proposed changes to §114.318 would require producers to submit alternative emission reduction plans under this new protocol to the ED no later than December 31, 2006, and would require the newly submitted plans to be approved or disapproved by the ED within 45 days of submittal.

The commission is requesting comments on the feasibility of accepting residual NO_x emission benefits from the supply of early lower sulfur gasoline as a creditable fuel strategy for producers to submit as part of an alternative emission reduction plan and how best to calculate the residual NO_x emission benefit using currently available EPA-approvable calculation methodologies.

The commission is also requesting comments on whether to allow credits from early gasoline sulfur reduction to be used until December 31, 2010, in the Beaumont-Port Arthur (BPA) ozone nonattainment area containing Hardin, Jefferson, and Orange Counties.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the pro-

posed rules. The proposed rulemaking contains revisions that pertain to the regulation and production of LED. Any fiscal implications will primarily affect the producer and suppliers, which typically do not include governmental entities, of LED. The proposed changes would create a protocol for alternative emission reduction plans that can be approved by EPA and would make the TxLED Program requirements more consistent with existing CARB regulations and EPA guidelines; thus, the changes should not create any supply shortage or price fluctuations that could adversely affect state and local governments' diesel-fueled vehicle fleets.

This proposed rulemaking would correct rule references made in an earlier rulemaking; require EPA approval, in addition to approval given by the ED, for alternative test methods; establish a method and process to allow the commission and EPA to approve alternative emission reduction plans, or revisions to those plans, without requiring a SIP revision; and clarify the criteria for emission tests conducted to determine LED compliance. Diesel fuel producers that produce and supply diesel fuel to the 110 central and eastern Texas counties affected by the LED regulations may be impacted by the changes proposed to establish a method or process to allow EPA to approve alternative emission reduction plans without having to revise the SIP. If diesel fuel producers are required to change fuel formulations produced under current rules to meet the proposed methods and process to meet EPA approval, they may incur additional costs in developing new approvable fuel formulations that demonstrate equivalent NO_x emission reductions.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be greater clarification of LED requirements and increased flexibility in meeting criteria for alternative fuel strategies, leading to more rapid EPA approval of alternative emission reduction plans and SIPs.

Diesel producers producing and distributing diesel fuel in the counties affected by the LED rules may or may not incur additional fiscal costs if currently produced fuel formulations or alternative emission reduction plans do not meet proposed criteria. The proposed protocol may impact the approvability of some fuel strategies in the currently approved alternative emission reduction plans; however, the proposed rules should provide mechanisms for compliance that allow producers to maintain a majority of the strategies in their plans. Developing alternative fuel strategies is voluntary and there are a variety of methods to choose from. It is not known if changing fuel formulations or alternative emission reduction plans to meet the proposed requirements will generate additional costs or generate additional savings. Any costs or savings generated will depend on the producer and the method chosen to meet proposed standards.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Typically, producers of diesel fuel are not considered to be a small or micro-business. If a small or micro-business were to produce or distribute diesel fuel in the affected counties, it would be subject to the same cost increases or savings in providing alternative fuel strategies as a large business.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to §§114.6, 114.312, 114.313, and 114.315 - 114.318 would provide for EPA consultation prior to commission approval of alternative test methods; establish a protocol by which alternative emission reduction plans, or revisions to those plans, could be approved by the EPA without the need for individual SIP revisions for each plan; make alternative formulation testing requirements consistent with EPA guidance and CARB regulations; and make corrections to citations for accuracy and consistency. In addition, the proposed amendments are intended to provide additional clarification and flexibility in the LED air pollution control program as part of the strategy to reduce emissions of NO_x necessary for the counties in the Houston-Galveston-Brazoria (HGB), BPA, and Dallas-Fort Worth (DFW) nonattainment areas to be able to demonstrate attainment with the ozone national ambient air quality standard (NAAQS). While this strategy is intended to protect the environment by reducing NO_x emissions that help form ozone, the commission does not find that the diesel fuel producers and importers covered by this rulemaking comprise a sector of the economy, or that the revisions proposed in this rulemaking will adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the HGB, BPA, and DFW nonattainment areas. This rulemaking proposes to address EPA concerns regarding its input on test methods and review of alternative formulations; create consistency with EPA and CARB guidance and regulations of which the refining industry is familiar; and create a protocol for alternative emission reduction plans that will simplify EPA approval of all alternative emission reduction plans and protect producers' potentially confidential information.

The proposed amendments to Chapter 114 are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed rules do not meet any of the four applicability requirements. Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the LED requirements in Chapter 114 were developed as part of the control strategy to meet the ozone NAAQS set by the EPA under Federal Clean Air Act (FCAA), 42 United States Code (USC), §7409, and therefore meet a federal require-

ment. The amendments to this chapter were developed in order to provide more clarity and consistency to the LED requirements, provide a smoother process for EPA approval of alternative emission reduction plans and revisions to those plans, and to address concerns from the EPA. FCAA, 42 USC, §7410, requires states to adopt and submit a SIP that provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. While 42 USC, §7410 does not require specific programs, methods, or reductions in order to meet the standard, SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning 42 USC, Chapter 85, Air Pollution Prevention and Control). While 42 USC, §§7401 *et seq*. does require some specific measures for SIP purposes, like the inspection and maintenance program, the statute also provides flexibility for states to select other necessary or appropriate measures. The federal government, in implementing 42 USC, §§7401 *et seq*., recognized that the states are in the best position to determine what programs and controls are necessary or appropriate to meet the NAAQS, and provided for the ability of states and the public to collaborate on the best methods for attaining the NAAQS within a particular state. However, this flexibility does not relieve a state from developing and submitting a SIP that meets the requirements of 42 USC, §7410. Thus, while specific measures are not generally required, the emission reductions are required. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that the nonattainment areas of the state will be brought into attainment on schedule.

As discussed earlier in this preamble, this rulemaking action implements requirements of 42 USC, §§7401 *et seq*. There is no contract or delegation agreement that covers the topic that is the subject of this action. Therefore, the proposed rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.012, 382.019, 382.202, and 382.208. Therefore, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed rulemaking does not meet any of the four applicability requirements. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The specific purpose of this strategy is to achieve reductions of NO_x emissions to reduce ozone formation in the HGB, BPA, and DFW nonattainment areas and thus help bring these areas into compliance with the air quality standards established under federal law as NAAQS for ozone. If adopted, the amendments to §§114.6, 114.312, 114.313, and 114.315 - 114.318 would provide for EPA consultation prior to commission approval of alternative test methods; establish a protocol by which alternative emission reduction plans, or revisions to those plans, could be approved by the EPA without the need for individual SIP revisions for each plan; make alternative formulation testing requirements consistent with EPA guidance and CARB regulations; and make corrections to citations for accuracy and consistency. These amendments will not place a burden on private, real property because this action does not require an investment in the permanent installation of new refinery processing equipment.

Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this proposed rulemaking action, because it is reasonably taken to fulfill an obligation mandated by federal law. Specifically, the emission limitations and control requirements of the LED air pollution control program were developed in order to meet the ozone NAAQS set by the EPA under 42 USC, §7409. States are primarily responsible for ensuring attainment and maintenance of NAAQS once the EPA has established them. Under 42 USC, §7410, and related provisions, states must submit, for approval by the EPA, SIPs that provide for the attainment and maintenance of NAAQS through control programs directed to sources of the pollutants involved. Therefore, one purpose of this rulemaking action is to provide additional clarification and flexibility in implementing the LED program necessary for the state's nonattainment areas to meet the air quality standards established under federal law as NAAQS. Attainment of the ozone standard will eventually require substantial reductions in NO_x emissions as well as VOC emissions. This rulemaking is only one step among many necessary for attaining the ozone standard.

In addition, Texas Government Code, §2007.003(b)(13), states that Texas Government Code, Chapter 2007 does not apply to an action that: 1) is taken in response to a real and substantial threat to public health and safety; 2) is designed to significantly advance the health and safety purpose; and 3) does not impose a greater burden than is necessary to achieve the health and safety purpose. Although the rules do not directly prevent a nuisance or prevent an immediate threat to life or property, they do prevent a real and substantial threat to public health and safety and significantly advance the health and safety purpose. This action is taken in response to the HGB, BPA, and DFW areas exceeding the federal ozone NAAQS, that adversely affects public health, primarily through irritation of the lungs. The action significantly advances the health and safety purpose by improving the LED program that reduces ozone levels in these nonattainment areas and 90 central and eastern Texas counties. Consequently, these proposed rules meet the exemption in Texas Government Code, §2007.003(b)(13). This rulemaking action therefore meets the requirements of Texas Government Code, §2007.003(b)(4) and (13). For these reasons, the proposed rules do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the

CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the proposed amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The proposed rulemaking will ensure that the amendments comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

The commission solicits comments on the consistency of the proposed amendments with the CMP during the public comment period.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on January 10, 2006, at 10:00 a.m. in Building E, Room 201S, at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral or written statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown, Office of Legal Services, at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Brandon Smith, MC 206, Chief Engineer's Office, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-5687; or emailed to *siprules@tceq.state.tx.us*. All comments should reference Rule Project Number 2005-063-114-EN. Comments must be received by 5:00 p.m. on January 17, 2006. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Morris Brown at (512) 239-1438.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.6

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of TxLED as described in the SIP is not required prior to February 1, 2005, and authorizes the commission to consider alternative emission reduction plans to comply with TxLED requirements; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendment implements Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.019, 382.202, and 382.208.

§114.6. Low Emission Fuel Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by [~~the~~] TCAA, §3.2, and §101.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter H of this chapter (relating to Low Emission Fuels), have the following meanings, unless the context clearly indicates otherwise.

(1) Additive--Any substance [~~, other than one composed solely of carbon and/or hydrogen,~~] that is intentionally added to gasoline or diesel fuel, including any added to a motor vehicle fuel system, and that is not intentionally removed prior to sale or use and that is required to be approved by and registered with the United States Environmental Protection Agency in accordance with 40 Code of Federal Regulations Part 79.

(2) - (7) (No change.)

(8) Final blend--A distinct quantity of low emission diesel fuel (LED) that is introduced into commerce without further alteration, which would tend to affect a regulated [~~LED~~] specification of LED [~~the fuel~~].

(9) (No change.)

(10) Gasoline--Any fuel that is commonly or commercially known, sold, or represented as gasoline, in accordance with American Society for Testing and Materials (ASTM) [~~ASTM Test Method~~] D4814-99 (Standard Specification for Automotive Spark-Ignition Engine Fuel), dated 1999.

(11)- (13) (No change.)

(14) Low emission diesel fuel (LED)--Any diesel fuel:

(A) - (C) (No change.)

(15) - (22) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 2, 2005.

TRD-200505576
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 239-0348

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SUBCHAPTER H. LOW EMISSION FUELS
DIVISION 2. LOW EMISSION DIESEL

30 TAC §§114.312, 114.313, 114.315 - 114.318

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendments are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of TxLED as described in the SIP is not required prior to February 1, 2005, and authorizes the commission to consider alternative emission reduction plans to comply with TxLED requirements; and §382.208, concerning Attainment Program, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendments implement Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.019, 382.202, and 382.208.

§114.312. Low Emission Diesel Standards.

(a) No person shall sell, offer for sale, supply, or offer for supply, dispense, transfer, allow the transfer, place, store, or hold any diesel fuel in any stationary tank, reservoir, or other container in the counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates), that may ultimately be used to power a diesel fueled compression-ignition engine in the affected counties, that does not meet either the low emission diesel fuel (LED) standards of subsections (b) and (c) of this section, or the requirements of subsection (f) of this section.

(b) - (e) (No change.)

(f) Alternative diesel fuel formulations that the producer has demonstrated to the satisfaction of the executive director, through emissions and performance testing methods prescribed in §114.315(c) and (d) of this title (relating to Approved Test Methods), as achieving comparable or better reductions in emissions of oxides of nitrogen [~~, volatile organic compounds,~~] and particulate matter may be used to satisfy the requirements of subsections (b) and (c) of this section. For alternative diesel fuel formulations that incorporate additive systems, the estimated emissions benefits of the alternative diesel fuel formulation may be determined by comparing the emissions and performance characteristics of the alternative diesel fuel with the additive system versus the emissions and performance characteristics of a diesel fuel without the additive system, as determined by the testing methods prescribed in §114.315(c) and (d) of this title.

§114.313. Designated Alternate Limits.

(a) A producer or importer may assign a designated alternative limit (DAL) for aromatic hydrocarbon content to a final blend of low emission diesel fuel (LED) produced or imported by the producer or importer, except for that LED produced in accordance with §114.312(f) [~~§114.312(g)~~] of this title (relating to Low Emission Diesel Standards), if the following conditions are met.

(1) (No change.)

(2) The producer or importer shall notify the executive director of the volume (in barrels) and the DAL of the final blend. This notification shall be received by the executive director before the start of physical transfer of the LED from the production or import facility, and in no case less than 12 hours before the producer [~~either~~] completes physical transfer of the final blend.

(3) Within 90 days before or after the start of physical transfer of any final blend of LED to which a producer or importer has assigned a DAL exceeding the limit for aromatic hydrocarbon content specified in §114.312(b) [~~§114.312(c)~~] of this title, the producer or importer shall complete physical transfer from the production or import facility of LED in sufficient quantity and with a DAL sufficiently below the standard specified in §114.312(b) [~~§114.312(c)~~] of this title to offset the volume of aromatic hydrocarbons in the LED reported in excess of the standard.

(b) No person shall sell, offer for sale, or supply LED, in a final blend to which a producer or importer has assigned a DAL:

(1) exceeding the standard specified in §114.312(b) [~~§114.312(c)~~] of this title for aromatic hydrocarbon content, where the total volume of the final blend sold, offered for sale, or supplied exceeds the volume reported to the executive director in accordance with subsection (a)(2) of this section; nor

(2) less than the standard specified in §114.312(b) [~~§114.312(c)~~] of this title for aromatic hydrocarbon content, where the total volume of the final blend sold, offered for sale, or supplied is less than the volume reported to the executive director in accordance with subsection (a)(2) of this section.

(c) (No change.)

§114.315. Approved Test Methods.

(a) Compliance with the diesel fuel content requirements of this division must be determined by applying the appropriate test meth-

ods and procedures specified in the active version of American Society for Testing and Materials (ASTM) D975 (Standard Specification for Diesel Fuel Oils), or the following supplementary methods, as appropriate.

(1) The aromatic hydrocarbon content may be determined by the active version of ASTM Test Method D5186 (Standard Test Method for Determination of Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography). The following correlation equation must be used to convert the supercritical fluid chromatography (SFC) results in mass percent to volume percent: aromatic hydrocarbons expressed in percent by volume = 0.916 x (aromatic hydrocarbons expressed in percent by weight) + 1.33.

(2) The polycyclic aromatic hydrocarbon (also referred to as polynuclear aromatic hydrocarbons or PAH) content may be determined by the active version of ASTM Test Method D5186 (Standard Test Method for Determination of Aromatic Content and Polynuclear Aromatic Content of Diesel Fuels and Aviation Turbine Fuels by Supercritical Fluid Chromatography). The correlation equation specified in paragraph (1) of this subsection must be used to convert the SFC results in mass percent to volume percent.

(3) - (7) (No change.)

(b) Modifications to the testing methods and procedures in this section may be approved by the executive director after consultation with the United States Environmental Protection Agency (EPA).

(c) The executive director, upon application, may approve alternative diesel fuel formulations as prescribed under §114.312(f) of this title (relating to Low Emission Diesel Standards) in accordance with the following procedures.

(1) The applicant shall initially submit a proposed test protocol to the executive director for approval, that must include:

(A) (No change.)

(B) a testing plan with test procedures that are consistent with the requirements of paragraphs (2) and (4) of this subsection;

(C) fuel analysis test data showing that the candidate fuel meets the specifications for the appropriate Grade No. 1-D S15 [~~or S500,~~] or Grade No. 2-D S15 [~~or S500~~] diesel fuel as specified in the active version of ASTM D975 [~~(Standard Specification for Diesel Fuel Oils)~~], except for lubricity, and identifying the characteristics of the candidate fuel identified in paragraph (2) of this subsection;

(D) fuel analysis test data showing that the fuel to be used as the reference fuel satisfies the characteristics identified in paragraph (3) of this subsection;

(E) a detailed description of the reasonable quality assurance and quality control procedures that will be implemented by the entity identified in subparagraph (A) of this paragraph to ensure the validity of the testing being performed; and

(F) notification of any outlier identification and exclusion procedure that will be used, and a demonstration that any such procedure meets generally accepted statistical principles. [~~The tests must not be conducted until the protocol is approved by the executive director. Upon completion of the tests, the applicant may submit an application for certification to the executive director. The application must include the approved test protocol, all of the test data, a copy of the complete test log prepared in accordance with paragraph (4)(D) of this subsection, a demonstration that the candidate fuel meets the requirements for certification specified in this subsection, and other information as the executive director may reasonably require. Upon review of the certification application, the executive director shall grant or deny the application. Any denial must be accompanied by a written statement of the reasons for denial.~~]

(2) The applicant shall supply the candidate fuel to be used in the comparative testing in accordance with paragraph (4) of this subsection.

(A) The sulfur content, total aromatic hydrocarbon content, polycyclic aromatic hydrocarbon, nitrogen content, [~~and~~] cetane number, API gravity index, viscosity at 40 degrees Celsius, flash point, and distillation (in degrees Fahrenheit) of the candidate fuel must be determined as the average of three tests conducted in accordance with the referenced test method specified in subsection (a) of this section.

(B) For alternative diesel fuel formulations that use an additive in the candidate fuel to achieve reductions, the applicant shall provide to the executive director upon application, the identity, chemical composition, and concentration of each additive used in the formulation and the test method by which the presence and concentration of the additive may be determined. [~~The identity and concentration of each additive in the candidate fuel must be determined by a test method specified by the applicant and approved by the executive director to adequately determine the presence and concentration of the additive.~~]

(C) (No change.)

(3) (No change.)

(4) Exhaust emission tests using the candidate fuel and the reference fuel specified in paragraph (3) of this subsection must be conducted in accordance with the federal test procedures as specified in 40 Code of Federal Regulations [~~CFR~~] Part 86 (Control of Emissions from New and In-Use Highway Vehicles and Engines), Subpart N (Emission Regulations for New Otto-Cycle and Diesel Heavy-Duty Engines - Gaseous and Particulate Exhaust Test Procedures), as amended.

(A) The tests must be performed using a Detroit Diesel Corporation Series-60 engine or an engine specified by the applicant and approved by the executive director to be equally representative of the post-1990 model year heavy-duty diesel engine fleet. The test engine must have a minimum of 125 hours of use and exhibit stable operation before beginning the testing specified in this paragraph and must not exceed 110% of its applicable exhaust emission standards when using the reference fuel specified in paragraph (3) of this subsection.

(B) (No change.)

(C) The applicant shall ensure that one of the test sequences in clause (i) or (ii) of this subparagraph is used to conduct the exhaust emissions tests.

(i) If both cold start and hot start exhaust emission tests are conducted, a minimum of five exhaust emission tests, each test consisting of at least one cold start and two hot start cycles, must be performed on the engine with each fuel, using either of the following sequences, where "R" is a test on the reference fuel and "C" is a test on the candidate fuel: RC RC RC (and continuing in the same order) or RC CR RC CR RC (and continuing in the same order). The engine mapping procedures and a conditioning transient cycle must be conducted with the reference fuel before each cold start procedure using the reference fuel. The reference cycle used for the candidate fuel must be the same cycle as that used for the fuel preceding it.

(ii) If only hot start exhaust emission tests are conducted, one of the following test sequences must be used throughout the testing, where "R" is a test on the reference fuel and "C" is a test on the candidate fuel, each test consisting of at least three hot start cycles:

(I) Alternative 1: RC CR RC CR (continuing in the same order for a given calendar day; a minimum of 20 individual hot start cycles [~~exhaust emission tests~~] must be completed with each fuel);

(II) Alternative 2: RR CC RR CC (continuing in the same order for a given calendar day; a minimum of 20 individual hot start cycles [~~exhaust emission tests~~] must be completed with each fuel);

(III) Alternative 3: RRR CCC RRR CCC (continuing in the same order for a given calendar day; a minimum of 21 individual hot start cycles [~~exhaust emission tests~~] must be completed with each fuel); or

(IV) Alternative 4: RR CCC RR (a minimum of six hot start cycles must be performed on the reference fuel followed with a conditioning period not to exceed 72 hours of engine operation on the candidate fuel before the first individual hot start emission test on the candidate fuel is performed; the conditioning cycle must represent normal engine operation; a minimum of nine hot start cycles must be performed on the candidate fuel after the conditioning period; only the emissions from the tests on the reference fuel conducted before the candidate fuel tests must be used in the calculations conducted in accordance with paragraph (5) of this subsection; a minimum of six hot start cycles must be performed on the reference fuel after the candidate fuel tests to determine any carry-over effect that may occur from the use of the candidate fuel). [~~(with a conditioning period not to exceed 72 hours of engine operation on the candidate fuel before the first individual hot start emission test on the candidate fuel is performed; the conditioning cycle must represent normal engine operation); or~~]

~~*(V)* Alternative 5: a sequence determined to provide equivalent results and approved by the executive director.~~]

(iii) - *(v)* (No change.)

(D) - (E) (No change.)

(F) The exhaust emissions tests described in this paragraph must not be conducted until the test protocol as described in paragraph (1) of this subsection is approved by the executive director.

(G) Upon completion of the tests described in this paragraph, the applicant may submit an application for certification to the executive director. The application must include the approved test protocol, all of the fuel analysis and emissions test data, a copy of the complete test log prepared in accordance with subparagraph (D) of this paragraph, a demonstration that the candidate fuel meets the requirements for certification specified in this subsection, and other information as the executive director may reasonably require. Upon review of the certification application, the executive director shall grant or deny the application. Any denial must be accompanied by a written statement of the reasons for denial.

(5) The average emissions during testing with the candidate fuel must be compared to the average emissions during testing with the reference fuel specified in paragraph (3) of this subsection, applying one-sided Student's t statistics as set forth in Snedecar and Cochran, *Statistical Methods* (7th edition), page 91, Iowa State University Press, 1980. The executive director may issue a certification in accordance with this paragraph only if the executive director makes all of the following determinations:

(A) the average individual emissions of NO_x [~~, THC, NMHC,~~] and PM, respectively, recorded during testing with the candidate fuel are comparable or better than the average individual emissions of NO_x [~~, THC, NMHC,~~] and PM, respectively, recorded during testing with the reference fuel; [~~and~~]

(B) (No change.)

(C) in order for the determinations in subparagraph (A) of this paragraph to be made, for each referenced pollutant the candidate fuel must satisfy the following relationship; and [~~.~~]
Figure: 30 TAC §114.315(c)(5)(C)

(D) the average individual emissions of THC and NMHC, respectively, recorded during testing with the candidate fuel do not exceed the test engine's applicable exhaust emission standards.

(6) If the executive director finds that a candidate fuel has been properly tested in accordance with this subsection, and makes the determinations specified in paragraph (5) of this subsection, then the executive director may, after consultation with the EPA [~~United States Environmental Protection Agency (EPA)~~], issue an approval notification certifying that the alternative diesel fuel formulation represented by the candidate fuel may be used to satisfy the requirements of §114.312(a) of this title. The approval notification must identify all of the relevant characteristics of the candidate fuel determined in accordance with paragraph (2) of this subsection.

(A) The approval notification must identify the following specifications of the alternative diesel fuel formulation as approved under this subsection [~~provide that the approved alternative diesel fuel formulation has the following specifications~~]:

(i) the total aromatic hydrocarbon content, cetane number, or other characteristics as appropriate and as determined in accordance with the test methods identified in subsection (a) of this section; or [~~a sulfur content, total aromatic hydrocarbon content, polycyclic aromatic hydrocarbon content, and nitrogen content not exceeding that of the candidate fuel;~~]

(ii) for an alternative diesel fuel formulation using an additive to achieve reductions, the identity and minimum concentration or treatment rate of the additive, the minimum specifications of the base diesel fuel used in the approved formulation, and the test method or methods that must be used to satisfy the monitoring requirements of §114.316 of this title (relating to Monitoring, Recordkeeping, and Reporting Requirements). [~~a cetane number not less than that of the candidate fuel; and~~]

~~*(iii)* presence of all additives that were contained in the candidate fuel, in a concentration not less than in the candidate fuel.~~]

(B) [~~All such characteristics must be determined in accordance with the test methods identified in subsection (a) of this section.~~] The approval notification must assign an identification number to the specific approved alternative diesel fuel formulation.

(d) Notwithstanding subsection (c) of this section, the executive director, upon application, may approve alternative diesel fuel formulations as prescribed under §114.312(f) of this title that may be used to satisfy the requirements of §114.312(b) and (c) of this title if the applicant has demonstrated to the satisfaction of the executive director and the EPA that the formulation will achieve comparable or better reductions in emissions of NO_x [~~, THC, NMHC,~~] and PM.

(1) (No change.)

(2) If the alternative diesel fuel formulation has been demonstrated to the satisfaction of the executive director to achieve comparable or better reductions in emissions of NO_x [~~, THC, NMHC,~~] and PM under this subsection, then the executive director may issue an approval notification certifying that the alternative diesel fuel formulation may be used to satisfy the requirements of §114.312(a) of this title.

(A) The approval notification must identify the following specifications of the alternative diesel fuel formulation as approved under this subsection:

(i) the total aromatic hydrocarbon content, cetane number, or [~~and~~] other parameters as appropriate and as determined in accordance with the test methods identified in subsection (a) of this section; or

(ii) for an alternative diesel fuel using an additive to achieve reductions, the identity and [~~,~~] minimum concentration or [~~and~~] treatment rate of the additive, the minimum specifications of the base fuel used in the approved formulation, and the test method or methods that must be used to satisfy the monitoring requirements of §114.316 of this title [~~(relating to Monitoring, Recordkeeping, and Reporting Requirements)~~].

(B) (No change.)

§114.316. Monitoring, Recordkeeping, and Reporting Requirements.

(a) (No change.)

(b) All records relating to low emission diesel (LED) sampling must contain a statement declaring whether the aromatic hydrocarbon content of the sample conforms to the basic standard as specified in §114.312(b) of this title (relating to Low Emission Diesel Standards), to a designated alternative limit (DAL) in accordance with §114.313 of this title (relating to Designated Alternative Limits), to a limit as accepted under §114.312(e) of this title [~~(relating to Low Emission Diesel Standards)~~], or whether the diesel fuel conforms to an alternative diesel fuel formulation approved under §114.312(f) of this title.

(c) - (j) (No change.)

(k) Each producer electing to sell, offer for sale, supply, or offer to supply diesel fuel in accordance with §114.318 of this title (relating to Alternative Emission Reduction Plan) shall comply with the sampling and testing requirements of subsections (d) and (e) of this section for the appropriate fuel components of the diesel upon which the projected emission reductions were based. Each producer shall provide a quarterly report to the executive director no later than the 45th day following the end of the calendar quarter. The quarterly report must provide, at a minimum, the following information:

(1) - (2) (No change.)

(3) the information required to be collected in accordance with the sampling and testing requirements of this subsection and a reconciliation of the quarter's transactions relative to the requirements of this subsection for the appropriate fuel components of the diesel fuel that the projected emission reductions demonstrated in the producer's alternative emission reduction plan were based upon [~~volume of additive (if any) utilized by the producer to produce diesel fuel that is subject to the provisions of the alternative emission reduction plan as approved by the executive director and the identity of the additive and additive manufacturer~~].

§114.317. Exemptions to Low Emission Diesel Requirements.

(a) Any diesel fuel that is either in a research, development, or test status; or is sold to petroleum, automobile, engine, or component manufacturers for research, development, or test purposes; or any diesel fuel to be used by, or under the control of, petroleum, additive, automobile, engine, or component manufacturers for research, development, or test purposes, is exempted from the provisions of this division (relating to Low Emission Diesel), provided that:

(1) (No change.)

(2) the diesel fuel is not sold, dispensed, or transferred, or offered for sale, dispensing, or transfer from a retail fuel dispensing facility. It shall also not be sold, dispensed, or transferred, or offered for sale, dispensing, or transfer from a wholesale purchaser-consumer facility, unless such facility is associated with fuel, automotive, or engine research, development, or testing.

(b) (No change.)

(c) The owner or operator of a retail fuel dispensing outlet is exempt from all requirements of §114.316 of this title (relating to Monitoring, Recordkeeping, and Reporting Requirements) except §114.316(g) [~~§114.316(e)~~] of this title.

(d) Diesel fuel that does not meet the requirements of §114.312 of this title (relating to Low Emission Diesel Standards) is not prohibited from being transferred, placed, stored, and/or held within the affected counties so long as it is not ultimately used:

(1) to power a diesel fueled compression-ignition engine in a motor vehicle in the counties listed in §114.319 of this title (relating to Affected Counties and Compliance Dates), except for that used in conjunction with purposes stated in subsections (a) and (b) of this section; or

(2) (No change.)

§114.318. Alternative Emission Reduction Plan.

(a) Diesel fuel that is sold, offered for sale, supplied, or offered for supply by a producer who submits an alternative emission reduction plan in accordance with subsection (b) of this section [~~, that contains a substitute fuel strategy and~~] that is approved by the executive director [~~and the United States Environmental Protection Agency (EPA)~~] will be considered in compliance with the requirements of §114.312(a) of this title (relating to Low Emission Diesel Standards).

(b) An alternative emission reduction plan must demonstrate that the emission reductions associated with compliance of this division (relating to Low Emission Diesel) that are attributable to the volume of diesel fuel that is sold, offered for sale, supplied, or offered for supply by the producer to the affected counties listed under §114.319(b) of this title (relating to Affected Counties and Compliance Dates) each year will be achieved through an equivalent substitute fuel strategy in accordance with either one or a combination of the following procedures.

(1) A producer shall demonstrate for each specific group of affected counties listed under each paragraph of §114.319(b) of this title, using the Unified Model as described in the United States Environmental Protection Agency (EPA) staff discussion document, *Strategies and Issues in Correlating Diesel Fuel Properties with Emissions*, Publication Number EPA420-P-01- 001, published July 2001, and using only the diesel fuel that is sold, offered for sale, supplied, or offered for supply by the producer in the specific counties listed in each group to determine the average fuel properties to be used for the demonstration applicable to each group of affected counties, the following:

(A) the average fuel properties of all on-road diesel fuel produced in any given calendar year that is sold, offered for sale, supplied, or offered for supply by the producer in the applicable group of affected counties achieve at least a 5.5% reduction in oxides of nitrogen (NO_x) emissions for the year 2007; and

(B) the average fuel properties of all non-road diesel produced in any given calendar year that is sold, offered for sale, supplied, or offered for supply by the producer in the applicable group of affected counties achieve at least a 6.2% reduction in NO_x emissions.

(2) A producer shall demonstrate for the counties listed in §114.319(b)(4) of this title, the total number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur

reduction using the following methodology or the methodology specified in paragraph (3) of this subsection.

(A) The credits from early gasoline sulfur reduction as determined in subparagraph (C) of this paragraph and paragraph (3)(A) of this subsection will be based on the actual level of sulfur in a producer's gasoline that was below the sulfur levels identified in the EPA's MOBILE6 model as the default refinery average and cap for conventional gasoline in each applicable year and as reported by the producer to EPA in accordance with 40 Code of Federal Regulations (CFR) §80.105 for 2003, and 40 CFR §80.370 for 2004 and 2005.

(B) The credits from early gasoline sulfur reduction can only be generated from the gasoline supplied by the producer in 2003, 2004, and 2005, to the counties listed in §114.319(b)(4) of this title and these credits, as determined in accordance with the offset ratios specified in subparagraph (C) of this paragraph, can only be used in the counties listed in §114.319(b)(4) of this title to demonstrate compliance through December 31, 2010.

(C) The credits from early gasoline sulfur reduction will be determined based on the level of sulfur reduction in each year as specified in the following tables and subject to the corresponding gasoline-to-diesel offset ratios.

(i) Table 1 - 2003 Gasoline-to-Diesel Offset Ratios. Figure: 30 TAC §114.318(b)(2)(C)(i)

(ii) Table 2 - 2004 Gasoline-to-Diesel Offset Ratios. Figure: 30 TAC §114.318(b)(2)(C)(ii)

(iii) Table 3 - 2005 Gasoline-to-Diesel Offset Ratio. Figure: 30 TAC §114.318(b)(2)(C)(iii)

(D) To determine the number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction, the applicable offset ratio must be applied to the actual number of barrels of lower sulfur gasoline supplied by the producer to the counties listed in §114.319(b)(4) of this title annually in 2003, 2004, and 2005.

(3) A producer may demonstrate for the counties listed in §114.319(b)(4) of this title the total number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction using the percentage of NO_x emission reductions attributed to on- road diesel for 2007 calculated with the Unified Model as described in paragraph (1) of this subsection, and the average fuel properties of the diesel fuel that is sold, offered for sale, supplied, or offered for supply by the producer in these specific counties, to determine the applicable offset ratio to be applied to the actual number of barrels of lower sulfur gasoline supplied by the producer to the counties listed in §114.319(b)(4) of this title annually in 2003, 2004, and 2005.

(A) To determine the number of barrels of noncompliant diesel fuel that may be offset by credits from early gasoline sulfur reduction, the offset ratio to be applied to the actual number of barrels of lower sulfur gasoline supplied by the producer to the counties listed in §114.319(b)(4) of this title annually in 2003, 2004, and 2005, must be determined in accordance with the following methodology. Figure: 30 TAC §114.318(b)(3)(A)

(B) The credits from early gasoline sulfur reduction can only be generated from the gasoline supplied by the producer in 2003, 2004, and 2005, to the counties listed in §114.319(b)(4) of this title and these credits, as determined in accordance with the offset ratios as calculated in accordance with subparagraph (A) of this paragraph, can only be used in the counties listed in §114.319(b)(4) of this title for compliance through December 31, 2010.

~~[(b) In order to be approved, the plan must demonstrate the market share the producer supplies, demonstrate the reductions associated with compliance with this division attributable to the market share, and specify a substitute fuel strategy that will achieve equivalent reductions.]~~

(c) Producers must submit alternative emission plans in accordance with subsection (b) of this section to the executive director no later than December 31, 2006. ~~[Early reductions may be deemed to be equivalent by the executive director and the EPA.]~~

(d) (No change.)

(e) The executive director shall approve or disapprove alternative emission reduction plans that have been submitted by producers in accordance with subsection (b) of this section within 45 days of submittal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 2, 2005.

TRD-200505577
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 239-0348

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 59. PARKS

SUBCHAPTER E. OPERATION AND LEASING OF PARK CONCESSIONS

31 TAC §§59.104, 59.105, 59.108

The Texas Parks and Wildlife Department (TPWD) proposes amendments to §§59.104, 59.105, and 59.108, concerning operating and leasing of park concessions.

The proposed amendment to §59.104, concerning Types of Concession Contracts, would expand the description of revocable temporary contracts. The current rule authorizes the department to enter into a revocable temporary contract when necessary to take immediate action to continue services or provide interim services. The expanded description would also allow the department to enter into a temporary revocable contract in order to test a new service. The amendment is necessary to allow the department to test the feasibility of some new services before they are incorporated into a park's regular program. Determining visitor support prior to entering into a longer-term contractual agreement is an efficient practice for both TPWD and the prospective concessionaire.

The proposed amendment to §59.105, concerning Contract Terms, would allow the department to stipulate a contract length within a range of six to eighteen months. The current rule

requires all revocable temporary contracts to be six months in length. The longer time period would allow staff to perform a more thorough critical examination of new and untested services. A calendar year or longer is usually required to examine customer reaction and support during seasonal visitation fluctuations.

The proposed amendment to §59.108, concerning Bond and Insurance, would eliminate reference to the minimum amount of liability insurance required of concessionaires. The current rule requires a concessionaire to carry a minimum of $300,000 in liability insurance. The department contracts with private service providers under the concessions program to offer a variety of park activities, with varying degrees of associated risk. The nature of these activities and the related competency skill required to perform the activities directly relate to the degree of risk. To ensure the department's protection, the amount of liability coverage required of concessionaires must be commensurate with the associated risk (i.e., lower coverage required for minimal risk activities and greater coverage required for higher risk activities). A regulatory requirement for a specific amount of liability coverage can be misleading to prospective concessionaires. The proposed amendment is necessary to avoid potential confusion.

Mr. Michael Crevié, State Park Business Manager, has determined that for each of the first five years that the rules as proposed are in effect, there may be fiscal implications to state government as a result of enforcing or administering the rules. Identifying the correct concession-provided services that meet demand and promote visitor enjoyment and satisfaction of the parks will sustain the current user base and their contributions to the financial support of the department. Potential state losses will be minimized by requiring leased concessionaires to secure an adequate amount of liability coverage that is commensurate with the associated risk. There will be no fiscal implications to units of local government as a result of enforcing or administering the rules.

Mr. Crevié also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the effect of sustaining park visitation and user support by meeting demands for some visitor services through the leased concessions program. Additionally, a public benefit is achieved by decreasing the potential loss to the state by ensuring adequate concessionaire liability coverage for these provided visitor services.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed. The current rule requires a concessionaire to maintain insurance "against losses by fire, public liability, employee liability, and other hazards . . . in an amount satisfactory to the department," but no less than $300,000. The proposed rule continues the requirement that a concessionaire maintain insurance, but does not specify the minimum amount of coverage. The proposal would therefore enable the department to require insurance coverage in an amount less than $300,000, so long as the amount is satisfactory to the department. As a result, the department would be able to require less insurance than currently required if warranted by the risk involved in the concession operation. As a result, any impact on small or microbusiness would be a positive impact. Thus, the proposed rule does not affect small businesses, microbusinesses, or persons required to comply, and, if anything, allows the department to reduce the expense incurred by a concessioner who enters into a contract with the department.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Michael Crevié, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560 (e-mail: mike.crevier@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, §13.015, which authorizes the Texas Parks and Wildlife Department to grant contracts for operating concessions in state parks and to make regulations governing the granting and operating of concessions.

The proposed new rule and amendments affect Parks and Wildlife Code, Chapter 13.

§59.104. Types of Concession Contracts.

(a) A standard form long-term contract shall be used to grant major concession rights and privileges when the concessioner is required to make sizable investments in merchandise inventories, furnishings or equipment, and maintenance or repair of state-owned buildings and structures.

(b) A revocable short-term contract shall be used to grant minor concession privileges when the scope and size of the concession warrants it. Examples include merchandise vending machines, miscellaneous coin-operated machines, recreational rental equipment, and other miscellaneous services or accommodations the public has a right to expect and the executive director deems appropriate. A prospectus announcing the availability of this type of concession may not be issued.

(c) A revocable temporary contract may be used when it is deemed necessary that immediate action be taken to continue services, [~~or~~] provide interim services, or under circumstances when a test period is required to determine the feasibility for adding a new concessioner provided service in a park.

§59.105. Contract Terms.

(a) The standard form contract shall be executed for a term of years commensurate with the size of the total investment required of the concessioner. The duration of a contract shall be set for a period of time to allow for a reasonable opportunity for return on investment.

(b) Revocable short-term contracts shall be issued for a term of two years or less.

(c) Revocable temporary contracts shall be issued for a term of 6 to 18[~~six months or less~~].

(d) No renewal rights shall be made a part of any concession contract.

§59.108. Bond and Insurance.

(a) The executive director may require the concessioner to furnish a bond conditioned upon the faithful performance of his contract. When the contract award involves construction of public accommodations, the concessionaire will be required to obtain a payment bond.

(b) The concessioner shall carry such insurance against losses by fire, public liability, employee liability, and other hazards as is cus-

tomary among prudent operators of similar businesses under comparable circumstances, and in amounts satisfactory to the department. [~~The minimum limit for public liability shall be $300,000.~~] The executive director has the authority to increase this limitation when conditions warrant such action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 5, 2005.

TRD-200505599
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 389-4775

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PART 4. SCHOOL LAND BOARD

CHAPTER 151. OPERATIONS OF THE SCHOOL LAND BOARD

31 TAC §151.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the School Land Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas General Land Office (GLO) and Texas School Land Board (SLB) propose the repeal of 31 TAC Part 4, Chapter 151, relating to Operations of the School Land Board, §151.3, relating to Appraisal Fees: Vacancies and Excess Acreage. The proposed repeal will eliminate duplication of agency fees.

The proposed repeal will eliminate the appraisal fees for vacancies and excess acreage currently in 31 TAC §151.3. The GLO recently organized all the fees and costs the agency charges under 31 TAC Part 1, Chapter 3. The GLO organized the fees and costs under one rule in order to facilitate the public's use of the agency rules, and the public's understanding of the fees and costs associated with doing business with the GLO. Upon review of its rules, the GLO found that the appraised fees in 31 TAC §151.3 were redundant of those found in Chapter 3. In a continued effort to maintain and organize its rules that facilitate the public's ease in access and use of its rules, the GLO proposes the repeal of 31 TAC §151.3.

Larry Laine, Chief Clerk of the General Land Office, has determined that for each year of the first five years the repealed section is in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the repealed section.

Mr. Laine has also determined that there will be no economic cost to persons required to comply with this repealed section, as this repeal adds no additional restrictions or requirements that did not already exist. The public will benefit from the proposed repeal because the repeal of the rule will provide more clarity as to the actual appraisal fees the GLO charges for vacancies and excess acreage. There will be no effect on small businesses, and a local employment impact statement on this proposed repealed section is not required, because the proposed repealed appraisal fee will not adversely affect any local economy in a material manner for the first five years they will be in effect.

To comment on the proposed repeal, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or e-mail to walter.talley@glo.state.tx.us. Comments must be received no later than 30 days from the date of publication of this proposal.

The repeal is proposed under authority granted in Texas Natural Resources Code §31.051, which provides the Commissioner of the GLO the authority to make and enforce suitable rules consistent with the law and §32.205, which provides the SLB the authority to adopt rules to carry out Texas Natural Resources Code Chapter 32.

Texas Natural Resource Code, Chapters 31, 32 and 51 are affected by the proposed repeal.

§151.3. Appraisal Fees: Vacancies and Excess Acreage.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505504
Trace Finley
Policy Director, General Land Office
School Land Board
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 475-1859

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PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.7

The Texas State Soil and Water Conservation Board (State Board) proposes an amendment to 31 TAC §523.7, concerning identifying the geographic area in which the program is available. The amendment eliminates specified incentive payments and establishes a method for the State Board to set incentive payments consistent with available appropriated funds and bases incentive payments on weight rather than volume; revises the language to allow the State Board to contract with a designated agent to administer the program rather than limit contracts to a local soil and water conservation district; and changes the language to specify that eligible haulers must participate in a workshop covering proper procedures for reimbursement payments rather than acceptable methods of hauling animal wastes.

Kenny Zajicek, Fiscal Officer for the Texas State Soil and Water Conservation Board, has determined that for each year of the first five years the proposed amendment will be in effect, there

will be no fiscal implications for state or local governments as a result of administering the amended rule.

Mr. Zajicek has also determined that for the first five year period this amended rule is in effect, the public benefit will remain consistent with past administration of the program. There is no anticipated cost to small businesses or individuals resulting from this amended rule.

Comments on the proposed rule may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, extension 231.

The amendments are proposed under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this proposal.

§523.7. Incentives for Composting Animal Manure.

(a) Purpose. The purpose of this program is to expand the efforts and activities of the Texas State Soil and Water Conservation Board (State Board) and local Soil and Water Conservation Districts (SWCD/District) in the reduction of Nonpoint Source Pollution loadings in watersheds impacted by nutrients from agricultural activities. This program will promote the hauling of excess manure from animal feeding operations located in the North and Upper North Bosque River (Segments 1226 and 1255) and Leon River (Segments 1221 and 1223) Watersheds to certified compost facilities instead of application to land off-site of the facility and in the impacted watersheds [~~watershed~~].

(b) (No change.)

(c) Reimbursement Rates. Reimbursement rates shall be established by the State Board on a ton [~~cubic yard~~] per mile rate based on the conditions in the watersheds [~~watershed~~]. [~~For the Bosque River and Upper Leon River Watershed, reimbursement will be made at $0.85 per cubic yard for the first mile and $0.125 per cubic yard for each additional mile, unless the State Board, on a case-by-case basis, grants an exception.~~]

(d) - (e) (No change.)

(f) Required Signatures. Reimbursement forms will provide for and require the following signatures:

(1) The owner/operator or the designated agent of the Animal Feeding Operation (AFO) from which the load originates, certifying the location, date and weight [~~volume~~] of the load leaving the AFO.

(2) The owner/operator or the designated agent of the certified compost facility where the load is delivered, certifying delivery, location, date and weight [~~volume~~] received.

(3) The hauler, certifying delivery date, weight [~~volume~~] and mileage.

(g) Rejected Goods. The State Board will not reimburse hauling expenses for loads not accepted by a certified compost facility. It is the responsibility of the AFO owner/operator or the designated agent to arrange for acceptance by the compost facility prior to initiating delivery.

(h) Assistance. The owner/operator or the designated agent of an AFO may obtain assistance in locating haulers and certified compost facilities by contacting the designated agent of the State Board in the watershed.

(i) Eligible Haulers. In order to be eligible for reimbursement payments, haulers must participate in a workshop conducted by the State Board designated agent covering proper procedures for reimbursement payments [~~acceptable methods of hauling animal manure~~]. Reimbursement will not by paid for loads invoiced not consistent [~~hauled inconsistent~~] with State Board approved procedures [~~methods~~].

(j) Designated Agent of the State Board. The State Board designated agent [~~local Soil and Water Conservation District~~] will be responsible for the day-to-day activities of the project in the watershed. The State Board designated agent [~~local Soil and Water Conservation District~~] may employ or contract with a person or entity to carry out this responsibility. The location and telephone number of the designated agent will be available [~~from the local District office or~~] from the State Board office in Temple.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 1, 2005.

TRD-200505561
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: January 15, 2006
For further information, please call: (254) 773-2250, ext. 252

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §31.14

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) proposes amended §31.14, relating to one-half time employment. The proposal has been adopted on an emergency basis and is published elsewhere in this issue of the *Texas Register*.

Section 31.14 establishes the maximum number of hours a retiree employed under the one-half time exception may work without forfeiting an annuity. Texas Governor Rick Perry proclaimed that Hurricane Rita posed a threat of imminent disaster along the Texas Coast beginning September 20, 2005 and, under §418.016, Government Code, suspended all rules and regulations that might inhibit or prevent prompt response to this threat for the duration of the incident. Pursuant to the disaster proclamation the governor's office requested emergency relief from §31.14 for TRS retirees who were needed to work in TRS-covered health care facilities in excess of one-half time to respond to the emergency disaster conditions but who were concerned about losing their annuities if they worked the additional hours. In renewing his declaration of an emergency disaster and emergency conditions caused by Hurricane Rita on October 20, 2005, the governor again directed that all

necessary measures be implemented to meet the disaster and suspended all rules and regulations that might inhibit or prevent prompt response to the threat. TRS has responded appropriately to the governor's request for emergency relief and to the emergency disaster and conditions proclamations, which have the force and effect of state law. In proposing amendments to §31.14, the Board seeks to ratify the actions TRS staff took regarding one-half time employment for retirees in response to the governor's disaster proclamations for Hurricane Rita and to clarify as well as to document the nature and scope of such response. Thus, for retirees working in health care facilities during the months of September, October, and November 2005 in response to emergency conditions declared by the governor for Hurricane Rita, the proposed amendments to §31.14 would grant a necessary and appropriately limited exception to the maximum number of hours a one-half time employee may work in a calendar month. The proposal would also provide clear and consistent guidance to TRS reporting entities regarding TRS's response to the governor's disaster proclamations and emergency relief request.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed amended rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule.

Mr. Galaviz also states that the public benefit will be to provide notice, clarification, documentation, and guidance to affected retirees and entities reporting employed retirees regarding TRS's response to the governor's disaster proclamations for Hurricane Rita and request for emergency relief concerning one-half time employment. There will be no measurable economic cost to persons required to comply with the amended rule. There will be no measurable impact on a local economy or local employment because of the rule proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than thirty (30) days after publication of this notice and proposed rule.

Statutory Authority: Tex. Gov. Proclamation No. 41-3023 (signed Sept. 20, 2005), 30 TexReg 6330 (2005), Governor Perry's initial disaster proclamation regarding Hurricane Rita, and Tex. Gov. Proclamation No. 41-3027 (signed Oct. 20, 2005), 30 TexReg 7799 (2005), the governor's renewal of the disaster proclamation for Hurricane Rita, both of which require adoption of amended rule §31.14 so that TRS may provide clear and consistent guidance to affected retirees and reporting entities regarding the limited exception being granted to the one-half time employment provisions in response to the governor's proclamations and emergency relief request; §418.012, Government Code, which provides that the above-referenced gubernatorial proclamations have the force and effect of state law; §824.601, Government Code, which authorizes the Board to adopt rules necessary to administer Chapter 824, Subchapter G, Government Code, relating to loss of benefits on resumption of service; and §824.602(j), Government Code, relating to exceptions to loss of benefits on resumption of service and which requires the Board to adopt rules defining "one-half time basis."

Cross-reference to Statute: Chapter 824, Subchapter G, Government Code, relating to loss of benefits on resumption of service.

§31.14. One-half Time Employment.

(a) A person who is receiving a service retirement annuity may be employed on a one-half time basis without forfeiting annuity payments for the months of employment. Employment by a third party entity is considered employment by a Texas public educational institution unless the retiree does not perform duties or provide services on behalf of or for the benefit of the institution or the retiree was first employed by the third party entity before May 24, 2003.

(b) Except as provided in subsection (e) of this section, one-half [~~One-half~~] time employment measured in clock hours shall not in any month exceed one-half of the time required for a full time position in a calendar month or 92 clock hours, whichever is less. Because the time required for a full time position may vary from month to month, determination of one-half time will be made on a calendar month basis. Actual course instruction in state-supported colleges (including junior colleges), universities, and public schools shall not exceed during any calendar month one-half the normal load for full-time employment at the same teaching level.

(c) For bus drivers, "one-half time" employment shall in no case exceed 12 days in any calendar month, unless the retiree qualifies for the bus driver exception in §31.18 of this chapter (relating to Bus Driver Exception). Work by a bus driver for any part of a day shall count as a full day for purposes of this section.

(d) This exception and the exception for substitute service may be used during the same school year provided the substitute service and one-half time employment do not occur in the same month. Effective September 1, 2003, this exception and the exception for substitute service may be used during the same calendar month without forfeiting the annuity only if the total amount of time that the retiree works in those positions in that month does not exceed the amount of time per month for work on a one-half time basis.

(e) For the 2005-2006 school year only, retirees who retired prior to September 1, 2005 and work in one-half time positions will not forfeit their annuities under this section for working additional hours during the months of September, October, and November 2005 if:

(1) the work was as a result of emergency conditions due to Hurricane Rita as declared by the Governor of Texas; and

(2) the retiree was working in a health care facility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 1, 2005.

TRD-200505563
Ronnie Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: January 15, 2006
For further information, please call: (512) 542-6438

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.7

The Public Utility Commission of Texas (commission) adopts, on an emergency basis, the withdrawal of emergency rule §25.7, relating to Relief for Victims of Hurricanes Katrina and Rita. As originally adopted, §25.7 was to expire on December 2, 2005. The Federal Emergency Management Agency (FEMA) announced on November 22, 2005, that more than 50,000 families were still living in hotel rooms in ten states, including Texas, after having evacuated from the areas struck by the hurricanes. Because of this continuing need for housing assistance, FEMA announced that it was extending the deadline for termination of its program to provide hotel housing for Hurricane evacuees until as late as January 7, 2006. Having determined that the imminent peril to the public welfare that necessitated the adoption of §25.7 continues to exist, the commission is withdrawing §25.7 and simultaneously adopting a replacement emergency rule to extend the provisions of §25.7 for an additional 60 days. The withdrawal of the section is adopted on an emergency basis to enable the commission to continue to limit the applicability of deposit requirements on evacuees from Hurricanes Katrina and Rita.

The commission adopts the withdrawal of §25.7 on an emergency basis pursuant to Texas Government Code, §2001.034, which authorizes a state agency to adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice, and states in writing the reasons for its findings. The withdrawal is adopted under PURA §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §36.001, which authorizes the commission to establish just and reasonable rates of an electric utility and adopt rules for determining the applicability of rates, and PURA §39.101(e), which authorizes the commission to adopt and enforce rules for minimum service standards for a retail electric provider relating to customer deposits, the extension of credit, and termination of service.

Cross Reference to Statutes: Texas Government Code, §2001.034 and §2001.036, and Public Utility Regulatory Act §§14.002, 36.001 and 39.101.

Filed with the Office of the Secretary of State on December 1, 2005.

TRD-200505572
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 1, 2005
For further information, please call: (512) 936-7223

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.8

The Public Utility Commission of Texas (commission) adopts, on an emergency basis, the withdrawal of emergency rule §26.8, relating to Relief for Victims of Hurricanes Katrina and Rita. As originally adopted, §26.8 was to expire on December 2, 2005. The Federal Emergency Management Agency (FEMA) announced on November 22, 2005, that more than 50,000 families were still living in hotel rooms in ten states, including Texas, after having evacuated from the areas struck by the hurricanes. Because of this continuing need for housing assistance, FEMA announced that it was extending the deadline for termination of its program to provide hotel housing for Hurricane evacuees until as late as January 7, 2006. Having determined that the imminent peril to the public welfare that necessitated the adoption of §26.8 continues to exist, the commission is withdrawing §26.8 and simultaneously adopting a replacement emergency rule to extend the provisions of §26.8 for an additional 60 days. The withdrawal of the section is adopted on an emergency basis to enable the commission to continue to limit the applicability of deposit requirements on evacuees from Hurricanes Katrina and Rita.

The commission adopts the withdrawal of §26.8 on an emergency basis pursuant to Texas Government Code, §2001.034, which authorizes a state agency to adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice, and states in writing the reasons for its findings. The withdrawal is adopted under PURA §14.002, which provides the commission with the authority to make and enforce

rules reasonably required in the exercise of its powers and jurisdiction, PURA §51.001, which authorizes the commission to make and enforce rules necessary to protect customers of telecommunications services consistent with the public interest, and PURA §64.004(b), which authorizes the commission to adopt and enforce rules to provide certain customer protections, including rules for minimum service standards for CTUs relating to customer deposits, extension of credit, and termination of service.

Cross Reference to Statutes: Texas Government Code, §2001.034 and §2001.036, and Public Utility Regulatory Act §§14.002, 51.001 and 64.004.

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Adriana A. Gonzales
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Effective date: December 1, 2005
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.25

The State Board of Education (SBOE) withdraws an amendment to §74.25, concerning curriculum requirements that was published as proposed in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4423). The section establishes provisions relating to high school credit for college courses. The proposed amendment would have changed the process through which students receive high school graduation credit for college courses.

At its November 18, 2005, meeting the SBOE took action to withdraw the proposed amendment to §74.25 and consider a revised proposed amendment at its next regular scheduled meeting.

Filed with the Office of the Secretary of State on December 5, 2005.

TRD-200505594
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: December 5, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.11

The Texas State Board of Examiners of Psychologists withdraws the proposed amendment to §463.11 which appeared in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4783).

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505498
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: November 29, 2005
For further information, please call: (512) 305-7700

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22 TAC §463.15

The Texas State Board of Examiners of Psychologists withdraws the proposed amendment to §463.15 which appeared in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4784).

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505499
Sherry L. Lee
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Texas State Board of Examiners of Psychologists
Effective date: November 29, 2005
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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 2. LICENSING

SUBCHAPTER B. CONSOLIDATED LICENSES

4 TAC §2.11

The Texas Department of Agriculture (the department) adopts amendments to §2.11 concerning expiration dates for consolidated licenses, without changes to the proposal published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 6983). Amendments to §2.11 are adopted to change the expiration dates for all consolidated licenses to the last day of the month corresponding to the license anniversary date, and to remove reference to specific expiration dates for component licenses that are encompassed by a consolidated license. In addition, the amendments will allow the department to more evenly distribute licensing workflow throughout the year, thereby providing a better turnaround time to customers. The amendments delete paragraph (d)(1), which provided for an expiration date of August 31 for licenses required by the Code, Chapter 132 and Chapter 15 of this title, paragraph (d)(2), which provides for an expiration date of May 31 for licenses required by the Code, Chapter 14 and Chapter 13 of this title, and paragraph (d)(3), which is now unnecessary due to changes made to the first sentence of subsection (d).

No comments were received on the proposal.

The amendments to §2.11 are adopted under Texas Agriculture Code (the Code), §12.033, which provides the department with the authority to adopt any rules necessary to implement a consolidated license program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 1, 2005.

TRD-200505559

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: December 21, 2005
Proposal publication date: October 28, 2005
For further information, please call: (512) 463-4075

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CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER C. TAP, TASTE OF TEXAS, VINTAGE TEXAS, TEXAS GROWN, NATURALLY TEXAS AND GO TEXAN AND DESIGN MARKS

4 TAC §17.52

The Texas Department of Agriculture (the department) adopts amendments to §17.52 concerning expiration dates for a certificate of registration for membership in the department's GO TEXAN promotional marketing membership program, and prorated registration fees for the GO TEXAN program, without changes to the proposal published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6870). The amendments to §17.52 are adopted to change all GO TEXAN certificate of registration expiration dates from August 31 to the last day of the month corresponding to the license anniversary date and to eliminate prorated registration fees. In addition, the amendments will create less confusion for the GO TEXAN program applicant about the correct membership fee amount, and will allow the department to more evenly distribute licensing workflow throughout the year, which will provide for a better turnaround time to customers. The amendments delete the reference to an August 31 expiration date and provide that the license is valid for one year and shall expire on the last day of the month corresponding to the license anniversary date, and deletes language relating to prorated license fees.

No comments were received on the proposal.

The amendments to §17.52 are adopted under Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §12.0175, which provides that the department, by rule, may establish programs to promote and market agricultural products and other products grown, processed, or produced in the state, and adopt rules necessary to administer a program established under this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200505560
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: December 21, 2005
Proposal publication date: October 21, 2005
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.78

The Railroad Commission of Texas adopts amendments to §3.78, relating to Fees and Financial Security Requirements, without changes to the version published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6023). The Commission adopts the amendments to implement the provisions of House Bill 380, 79th Legislature, Regular Session (2005), which amends Texas Natural Resources Code, §§91.104, 91.1041, 91.1042, 91.105, 91.107, 91.108, 91.1091, and 91.111, to authorize the Commission to accept well-specific plugging insurance policies from operators to satisfy financial security requirements for wells subject to the jurisdiction of the Commission as provided by Texas Natural Resources Code, §91.103.

A well-specific plugging insurance policy allows an insurer to use underwriting practices to evaluate a premium cost that, when combined with return on investment, would provide sufficient funding to properly plug a specific well. Other forms of financial security are based on the operator's financial resources and the operator's history of complying with its regulatory obligations.

The amendments conform with the statutory changes and enable an operator to satisfy the financial security requirements for a well if the well bore is included in a well-specific plugging insurance policy, as defined in new subsection (a)(11), provided that the policy: (1) is approved by the Texas Department of Insurance and is issued by an insurer authorized under state law to issue a well-specific plugging policy in Texas; (2) names the Commission as owner and contingent beneficiary; (3) names a primary beneficiary who has agreed to plug the well; (4) is fully prepaid and cannot be canceled or surrendered; (5) continues in effect until the specified well bore has been plugged in accord with Commission rules in effect at the time of plugging; (6) provides that benefits will be paid only when the specified well bore has been plugged; (7) provides benefits equal to the greatest of $2 per foot depth, the amount determined under Commission rules for a bay or offshore well, or the payment otherwise due under the policy for plugging the well bore.

Under Texas Natural Resources Code, §91.1041, the amount of the individual bond, letter of credit, or cash deposit required to be filed by an operator is based on $2 per foot of depth of all of that operator's well bores. Under §91.1042, the amount of the blanket bond, letter of credit, or cash deposit an operator is required to file is based on the operator's total well count. This amount starts at a minimum of $25,000 for an operator with 10 or fewer wells, and increases to higher financial security amounts based on increasing total well count tiers. The amendments to §3.78 conform with changes to Texas Natural Resources Code, §§91.1041 and 91.1042, so that any well bore covered by a well-specific plugging insurance policy is not included in the determination of the total depth of wells or the total number of wells when calculating the amount of the operator's required financial security.

The amendments delete §3.78(d)(2) that referred to unbonded operators filing a nonrefundable annual fee as financial security. This subsection was deleted because the enabling statutory provisions allowing for the options to file a nonrefundable annual fee as financial security expired September 1, 2004.

The amendments to §3.78(e) add references to the well-specific insurance policies, and in §3.78(f) to require that any operator with no financial security on file with the Commission first satisfy the financial security requirements for operating a well or wells prior to the issuance of a permit to drill, recomplete, or reenter a well. Under the prior rule, an operator without financial security could obtain a permit to drill, recomplete, or reenter a well, and engage in operations including producing the well for up to one year without filing any financial security. If an operator without financial security abandoned the well before renewal of its organization report, there was no financial security in place covering the well to call on. The amendments close this regulatory loophole by establishing a deadline by which any operator without financial security must file the financial security for operating a well or wells prior to the issuance of a permit.

The amendments to §3.78 also harmonize the statutory amendments authorizing the Commission to accept well-specific plugging insurance policies with the existing financial security requirements for operators of bay and offshore wells established under §3.78(g). Under Texas Natural Resources Code, §91.1041 and §91.1042, and rule §3.78(g), financial security amounts for operators of bay and offshore wells are calculated on an organizational basis rather than a per-well basis. An entry-level financial security requirement applies to all bay and offshore well operators. An additional amount may be applicable for each non-producing bay or offshore well. In recognition of the financial security requirement for all operators of bay and offshore wells, the amendments specify that a well-specific insurance policy be set at the greater of $2 per foot of well depth or the amount determined under §3.78(g) for a non-producing bay or offshore well.

The amendments to §3.78(h) also clarify that well-specific plugging insurance policies are limited to plugging liability for the specified well and cannot be called on by the Commission to control, abate, or clean up pollution associated with oil and gas operations, consistent with the statutory changes to Texas Natural Resources Code, §91.105. The Commission notes, however, that the amendments do not absolve an operator from reimbursing the Commission for the expenditure of Oil Field Clean Up Funds in the event that the Commission is required to expend funds exceeding the proceeds available under a well-specific plugging insurance policy under §3.78(k).

Because well-specific plugging insurance policies cannot be cancelled or surrendered, §3.78(j)(4) recognizes that the requirements for bonds, letters of credit, or cash deposit for transferred wells under §91.107 do not apply to any well bore covered by a well-specific plugging insurance policy.

The Commission received two comments on the proposed amendments, one from an association, the Texas Oil & Gas Association ("TXOGA"), and a second from Owl Energy Holdings, Ltd., ("Owl"), a company that has been authorized by the Texas Department of Insurance to issue well-specific plugging insurance policies.

TXOGA filed two comments, one during the formal comment period, and one two weeks after the deadline for submitting formal comments. Both comments express concern that the amendments may create a loophole for operators to avoid plugging and associated cleanup liability for wells with high plugging costs.

TXOGA advised that it had serious concerns that the proposed amendments would allow a well-specific plugging insurance policy to be used to limit plugging liability for any wells with high plugging costs. TXOGA stated that obtaining a well-specific plugging insurance policy at the minimum amount of $2 per foot to plug will relieve an operator of the responsibility to pay the full plugging costs for wells with high plugging costs. TXOGA explicitly recognized that the new subsection (a)(11) defines "well-specific plugging insurance policy" exactly as stated in the statutory amendments adopted in HB 380, but nevertheless urged that language be added to clarify who can be designated as a primary beneficiary under the policy with plugging responsibility and to define who pays if the cost to plug the well exceeds the value of the policy. Alternatively, TXOGA urged the Commission to limit the language in the definition of a well-specific plugging insurance policy in §3.78 to subparagraphs (A) - (C) in subsection (a)(11), and to strike subparagraphs (D) - (H) of subsection (a)(11).

Additionally, even though TXOGA acknowledged that the amendments to §3.78(h) were prescribed by the statutory amendments adopted in HB 380, TXOGA urged the Commission not to adopt amendments to §3.78(h). TXOGA also specifically questioned whether well-specific plugging insurance policies should require the operator to "control, abate, and clean up pollution associated with oil and gas operations." As an alternative to its recommendation that the Commission not adopt any amendments to §3.78(h), TXOGA suggested a new subsection (h)(2) to specify that well-specific plugging insurance policies are "subject to the condition that the operator plug and abandon all wells in accordance with applicable state law and permits, rules, and orders of the Commission." The proposed alternative language would also specify that a well-specific plugging insurance policy name the Commission as the owner and contingent beneficiary of the policy; name the operator as the primary beneficiary of the policy; require the policy to remain in effect until the well bore is plugged as required by the Commission; provide that benefits be paid after the well bore has been plugged; and, specify that benefits equal or exceed $2 per foot for each foot of well depth for land wells, $60,000 for bay wells, and $100,000 for offshore wells.

The Commission declines to adopt any of TXOGA's recommendations or proposed wording changes. TXOGA's comments specifically acknowledge that the Commission's amendments to §3.78(h) mirror the statutory changes enacted by HB 380. TXOGA's suggestion that the Commission ignore the statutory amendments by either not adopting any rule amendment or by adopting amendments that differ from the statutory amendments is untenable.

The Commission notes that TXOGA's concern that the proposed amendments would allow a well-specific plugging insurance policy to be used to limit plugging liability for any wells with high plugging costs is not consistent with the statutory amendments made by HB 380. Texas Natural Resources Code, §89.002 and §89.011, define an operator's responsibility for plugging wells. The statutory amendments made by HB 380 did not include any amendments to either §89.002 or §89.011, which would have been required to limit an operator's plugging liability to the benefits available under a well-specific plugging insurance policy.

Additionally, the Commission notes that §3.78(k), which the Commission did not propose to amend, specifically provides that filing any form of financial security does not extinguish an operator's liability for reimbursement for the expenditure of state oilfield clean-up funds. The Commission finds that §3.78(k), as currently written, adequately addresses TXOGA's concerns. However, the Commission acknowledges that a future amendment to §3.78(k) may be appropriate to clarify that filing a well-specific plugging insurance policy that satisfies some or all of an operator's financial security requirements does not extinguish an operator's liability for reimbursement for any expenditure of state oilfield clean-up funds.

Owl's comment expressed two concerns with the proposed amendments. Owl asserts that it was the legislative intent of HB 380 that a land well operator that insures all of its wells would not be required to post a base bond. Owl stated that there is some confusion on this point because the Commission did not change the language in §3.78(g)(1)(B)(i) which provides that the base amount of financial security required for a person operating "10 or fewer" wells is $25,000. Owl did not recommend a change in the rule wording to address this potential confusion.

While the Commission acknowledges that the cited language could be interpreted in the manner suggested by Owl, it declines to amend the language because the existing language in §3.78(g)(1)(B)(i) is identical to the language in Texas Natural Resources Code, §91.1042. In its administration of the amendments to §3.78, the Commission will not require a $25,000 blanket bond from operators who operate only land wells, have no other Commission regulated activities, and obtain well-specific plugging insurance policies for all wells operated.

Owl also expressed concern that the amendments to §3.78(j)(4) use the permissive word "may" instead of the mandatory word "shall" in describing approval of the transfer of operatorship for a well bore included in a well-specific plugging insurance policy. Owl acknowledged that the permissive language will give the Commission discretion to decline a transfer where there is an issue concerning the solvency of the insurer, but suggested that the mandatory language be adopted and the Commission rely on the Texas Department of Insurance to assure an insurer's solvency.

The Commission declines to adopt the mandatory language suggested by Owl in §3.78(j)(4). The amendments to Texas Natural Resources Code, §91.107, do not require the Commission to approve a transfer of operatorship for any well bore included in a well-specific plugging insurance policy. The Commission expects that in most instances where a well-specific plugging insurance policy is in place, the transfer will be approved, assuming all other Commission requirements are met. However, the use of the permissive language provides the Commission with dis-

cretion to decline a transfer if any concerns arise after the policy is issued that involve either the insurer or the primary beneficiary designated under the policy.

The Commission adopts the amendments to §3.78 pursuant to Texas Natural Resources Code, §§91.103, 91.104, 91.1041, 91.1042, 91.105, 91.107, 91.108, 91.1091, and 91.111, which provide the Commission with the authority to accept well-specific plugging insurance policies from operators to satisfy requirements to provide financial security for wells subject to the jurisdiction of the Commission.

Texas Natural Resources Code, §§91.103, 91.104, 91.1041, 91.1042, 91.105, 91.107, 91.108, 91.1091, and 91.111, are affected by the adopted amendments.

Statutory authority: Texas Natural Resources Code, §§91.103, 91.104, 91.1041, 91.1042, 91.105, 91.107, 91.108, 91.1091, and 91.111.

Cross-reference to statute: Texas Natural Resources Code, §§91.103, 91.104, 91.1041, 91.1042, 91.105, 91.107, 91.108, 91.1091, and 91.111.

Issued in Austin, Texas on November 29, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200505509
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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Proposal publication date: September 23, 2005
For further information, please call: (512) 475-1295

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CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201

The Railroad Commission of Texas adopts amendments to §8.201, relating to Pipeline Safety Program Fees, without changes to the version published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6545). The Commission adopts the amendments pursuant to House Bill (HB) 872, 79th Legislature, Regular Session (2005), which amends Texas Utilities Code, §121.211(d) and (g).

The amendments in §8.201(b) substitute the word "operator" for "investor-owned" or "municipally-owned" in identifying the natural gas distribution system obligated to comply with the rule; change the calendar year from 2004 to 2005; and change the deadline by which the annual pipeline safety program fee is to be filed from March 15, 2005, to March 15, 2006. In subsection (b)(6), the amendments clarify that amounts recovered from customers under subsection (b) by an investor-owned natural gas distribution system or a cooperatively owned natural gas distribution system shall not be included in the revenue or gross receipts of the system for the purpose of calculating municipal franchise fees or any tax posed under Subchapter B, Chapter 182, Tax Code, or under Chapter 122, nor shall such amounts be subject to a sales and use tax imposed by Chapter 151, Tax Code, or Subtitle C, Title 3, Tax Code.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments under Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.; and Texas Utilities Code, §121.211, as amended by HB 872, which authorizes the Railroad Commission to adopt, by rule, an inspection fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities.

Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, et seq., are affected by the amendments.

Statutory authority: Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Utilities Code, Chapter 121, and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on November 29, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: December 19, 2005
Proposal publication date: October 14, 2005
For further information, please call: (512) 475-1295

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CHAPTER 9. LP-GAS SAFETY RULES

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §9.5

The Railroad Commission of Texas adopts new §9.5, relating to Effect of Safety Violations, without changes to the version published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6547). The new statutory provisions, promulgated in House Bill (HB) 2172, 79th Legislature, Regular Session (2005), which amended Texas Natural Resources Code, §113.092 and §113.163, effective September 1, 2005, prohibit the Commission from approving an application for an initial or renewal LP-gas license or registration for an exemption from the LP-gas licensing requirements if the applicant or registrant for an exemption has violated a statute or Commission rule, order, license, permit, or

certificate that relates to safety, or a person who holds a position of ownership or control in the applicant or registrant for an exemption has held a position of ownership or control in another person during the seven years preceding the date on which the application or registration for an exemption is filed and during that period of ownership or control the other person violated a statute or Commission rule, order, license, permit, or certificate that relates to safety. There are some exceptions to this prohibition, which are also set forth in the new rule. Subsection (a) specifies that the new section applies to a violation that occurs on or after September 1, 2005.

New subsection (c) provides that an applicant, registrant for an exemption, or other person has committed a violation described by subsection (b) if a final judgment or final administrative order finding the violation has been entered against the applicant, registrant for an exemption, or other person and all appeals have been exhausted, or the Commission and the applicant, registrant for an exemption, or other person have entered into an agreed order relating to the alleged violation.

New subsection (d) states that, regardless of whether the person's name appears or is required to appear on an application or registration for an exemption, a person holds a position of ownership or control in an applicant, registrant for an exemption, or other person if the person is an officer, director, general partner, sole owner, or trustee of, or the owner of at least 25 percent of the beneficial interest in the applicant, registrant for an exemption, or other person, or is the applicant, registrant, or other person and has been determined by a final judgment or final administrative order to have exerted actual control over the applicant, registrant, or other person.

New subsection (e) provides that the Commission must approve an application for a license or a registration for an exemption if all of the following conditions, if applicable, are met: (1) the conditions that constituted the violation have been corrected or are being corrected in accordance with a schedule to which the Commission and the applicant, registrant for an exemption, or other person have agreed; (2) all administrative, civil, and criminal penalties have been paid or are being paid in accordance with a payment schedule to which the Commission and the applicant, registrant for an exemption, or other person have agreed; and (3) the application or registration for an exemption complies with all other requirements of law and Commission rules.

New subsection (f) states that the Commission may issue a license to an applicant or approve a registration for an exemption for a registrant for a term specified by the Commission if the license or registration for an exemption is necessary to remedy a violation of law or Commission rules.

New subsection (g) states that if the Commission is prohibited from approving an application for a license or a registration for an exemption or would be prohibited from doing so if the applicant, licensee, or registrant for an exemption submitted an application or registration for an exemption, then the Commission, after notice and opportunity for a hearing, by order may refuse to renew or may revoke a license or registration for an exemption issued to the applicant, licensee, or registrant for an exemption under this chapter. In determining whether to refuse to renew or to revoke a person's license or registration for an exemption under this subsection, the Commission must consider the person's history of previous violations, the seriousness of previous violations, any hazard to the health or safety of the public, and the demonstrated good faith of the person. If an application or registration for an exemption is denied under this subsection, the Commission must provide the applicant or registrant for an exemption with a written statement explaining the reason for the denial. An order issued under new subsection (g) must provide the applicant, licensee, or registrant for an exemption a reasonable period to comply with the judgment or order finding the violation before the order takes effect. The Commission's refusal to renew or revocation of a person's license or registration for an exemption under this subsection does not relieve the person of any existing or future duty under law, rules, or license or registration conditions. On refusal to renew or revocation of a person's license or registration for an exemption under this subsection, the person may not perform any activities under the jurisdiction of the Commission, except as necessary to remedy a violation of law or Commission rules and as authorized by the Commission under a license or registration for an exemption issued under subsection (f). A fee tendered in connection with an application or registration for an exemption that is denied under this section is nonrefundable. The Commission may not revoke or refuse to renew a license or registration for an exemption under this subsection if the Commission finds that the applicant, licensee, or registrant for an exemption has fulfilled the conditions set out in subsection (e).

The Commission received one comment from an individual. The individual agreed with HB 2172 and agreed that the Commission needs stronger regulations for safety rule violations, but stated that this rule should not be used against someone for not properly completing an LP-gas form or some other type of rule violation where safety is not an issue. The commenter also questioned whether the new rule would be necessary when the statute already exists, as amended by HB 2172. The commenter noted that the Commission regulates LP-gas as well as compressed natural gas (CNG) and liquefied natural gas (LNG), but that the statutes governing CNG and LNG are more written in more general terms, while the LP-gas statutes are written more specifically; the commenter stated that the LP-gas statutes should also be written in more general terms, which would allow the Commission to adopt rules whenever necessary without having to wait for another legislative session.

In response, the Commission notes that the legislature enacts the statutory law, which the agency then must administer and enforce. If there is an outstanding violation by an applicant for an LP-gas license or a registrant for exemption, the Commission must comply with the requirements of Texas Natural Resources Code, §113.163, whether the Commission agrees with it or not. Further, the specificity or generality of the statutes administered and enforced by the Commission and the question of whether one is better than the other are not issues in this rulemaking proceeding. In general, however, the validity of any delegation of authority to a state agency is based on whether the statute provides sufficient guidance to the agency.

It is fundamental that "a state administrative agency only has those powers that the Legislature expressly confers upon it or that are implied to carry out the express functions or duties given or imposed by statute. [Citations omitted.]" *Texas Workers' Compensation Commission v. Patient Advocates of Texas, et al.*, 136 S.W.3d 643 (Tex. 2004), at 652. The opinion continues: ". . . because a legislative body would be hard pressed to contend with every detail involved in carrying out applicable laws, delegation of some legislative power is both necessary and proper. [Citation omitted.] However, the Legislature's power to delegate must be exercised with a certain amount of caution. The Legislature may delegate its powers to administrative agencies established to carry out legislative purposes as long as the Legislature estab-

lishes reasonable standards to guide the agencies in exercising those powers. [Citation omitted.]" *Id.* at 654.

The Commission agrees that HB 2172 provides the Commission with more regulatory strength, but disagrees that the rule is not necessary because the statute as amended by HB 2172 exists. The Commission frequently uses its rules to include more specificity and clarity with regard to requirements for all regulatory matters. The Commission makes no changes to the wording of new §9.5 in response to this comment.

The Commission adopts the new section under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.163, as amended by House Bill 2172, 79th Legislature, Regular Session (2005), which prohibits the Commission from approving an application for an LP-gas license or approving a registration for an exemption from the LP-gas licensing requirements if the applicant or registrant for an exemption has violated a statute or Commission rule, order, license, permit, or certificate that relates to safety, or a person who holds a position of ownership or control in the applicant or registrant for an exemption has held a position of ownership or control in another person during the seven years preceding the date on which the application or registration for an exemption is filed and during that period of ownership or control the other person violated a statute or Commission rule, order, license, permit, or certificate that relates to safety.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.163.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on November 29, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505507
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: December 19, 2005
Proposal publication date: October 14, 2005
For further information, please call: (512) 475-1295

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CHAPTER 12. COAL MINING REGULATIONS
SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS
DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

16 TAC §12.108

The Railroad Commission of Texas adopts amendments to §12.108, relating to Permit Fees, without changes to the version published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6549). The Commission adopts the amendments to implement provisions of House Bill (HB) 472, 79th Texas Legislature, Regular Session (2005), which amends Texas Natural Resources Code, §134.055, relating to annual fees paid by a coal mining permit holder. HB 472 requires the collection of two new annual fees: a fee for each acre of land covered by a reclamation bond (bond acreage fee) and a fee for each mining permit in effect at the end of a calendar year. The bill also eliminates the minimum annual coal mined acreage fee of $120 per acre and allows the Commission to determine the amounts of all annual fees.

The Commission adds the two new annual fees required by HB 472 as new subsection (b)(2) and (3). In subsection (b)(2), the Commission adopts a fee of $3 for each acre of land within a permit area covered by a reclamation bond on December 31st of the year. In subsection (b)(3), the Commission adopts a fee of $3,550 for each permit in effect on December 31st of the year. The Commission also revises the annual fee for each acre of land from which coal or lignite has been removed (mined acreage fee) in subsection (b)(1) to $160 for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year, a reduction from the current rate of $390. The new fees go into effect on January 1, 2006.

The Commission received two comments on the proposed amendments, one from an association, Texas Mining and Reclamation Association (TMRA), and one from TXU Power, on behalf of TXU Mining Company, LP. TMRA supports the proposed rule revision, noting that the annual fee structure comprises the three components recommended by the industry in discussions with the Railroad Commission Staff in July 2004. TMRA further comments that the long-term goal was to have the bonded acreage fee as the only annual fee component. To accomplish this objective, TMRA suggests that the Commission implement biennial adjustments to the acreage fees for approximately ten years to gradually shift all annual fees exclusively to the bonded acreage fee category.

TXU Power strongly supports the rule revisions and the comments submitted by TMRA. TXU Power also refers to discussions with Railroad Commission Staff beginning in July 2004 that resulted in the proposed fee restructuring ; it is TXU Power's position that the new structure more appropriately allocates annual fees among the permitted coal mining operations. Similar to TMRA, TXU Power states that the long-term goal is to have the bonded acreage fee as the only annual fee applied to permitted coal mining operations.

The Commission agrees with the comments by TMRA and TXU Power supporting the rule amendments. In response to both commenters' desire to incrementally restructure the distribution of annual fees biennially, such that ultimately the bonded acreage fee is the only annual fee applied to permitted coal mining operations, the Commission neither agrees nor disagrees and declines to make a determination on that issue in this rulemaking proceeding. The Commission agrees that it has the authority to follow this course of action if future circumstances warrant. In addition, Texas Government Code, §2001.021, and Texas Natural Resources Code, §134.013, allow for the filing of a petition to initiate a rulemaking that could bring a revised fee structure before the Commission to consider.

The Commission adopts the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations and §134.055, as amended by House Bill (HB) 472, 79th Texas Legislature, Regular Session (2005), which authorizes the Commission to obtain annual fees and mandates the structure set forth in the proposed amendment to §12.108.

Statutory authority: Texas Natural Resources Code, §134.013 and §134.055.

Cross-reference to statute: Texas Natural Resources Code, §134.013 and §134.055.

Issued in Austin, Texas, on November 29, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505506
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: January 1, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §33.65

The State Board of Education (SBOE) adopts an amendment to §33.65, concerning the Texas Permanent School Fund (PSF). The amendment is adopted without changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4420) and will not be republished. Section 33.65 establishes provisions for the administration of the guarantee program for school district bonds. The adopted amendment modifies the administration of the PSF bond guarantee program. Changes to this rule are prompted by the need to clarify the current application process and to act on advice of legal counsel regarding the amount of capacity to be held in reserve.

Texas Education Code (TEC), §7.102(c)(33), authorizes the SBOE to adopt rules for the implementation of the guaranteed bond program as authorized in TEC, Chapter 45, School District Funds, Subchapter C, Guaranteed Bonds. Section 33.65 is the rule the SBOE adopted to implement the program. TEC, §45.053, limits the amount of bonds that can be guaranteed and requires an annual report to determine whether the amount of bonds guaranteed is within the limit. In November 2004, the SBOE adopted changes to the rule because the capacity of the fund to guarantee bonds was at its limit, prompting the need to limit access to the program. These rule changes took effect December 5, 2004. Further revisions are necessary to clarify the administration of the program and to increase the amount of capacity held in reserve based on the advice of legal counsel.

19 TAC §33.65 establishes the administration of the guarantee bond program, definitions applicable to the program, data sources used for the purposes of prioritization, and provisions related to application processing, including refunding issues, estimates of available capacity, and capacity reserved for emergencies; school district applications for guarantees, including commissioner review of applicants; limitations on the total amounts of bonds that may be guaranteed under the program; allocation of specific holdings of the PSF; defeasement of bonds; issuance of bonds; payments; guarantee restrictions; and transition for certain applications.

The adopted amendment clarifies various aspects of processing applications. The amendment addresses deadlines, definitions, and capacity issues. The deadlines addressed include the deadline for receiving applications and the deadline for pricing bonds that have been awarded the guarantee. The definitions of "new" and "refunding" issues are intended to clarify the SBOE's intention to focus on construction of new facilities and refunding of previously guaranteed general obligation bonds rather than to refund other types of maintenance-tax supported debt. The capacity clarification is intended to increase the amount of the fund held in reserve in order to ensure that the program does not exceed its capacity limit and to provide for emergency facilities needs of school districts. The adopted amendment also deletes an expired subsection that had provided for the transition to the monthly application process. Specifically, the adopted amendment includes the following changes.

Language regarding the deadline by which to receive applications is added to subsection (b)(3). New language is added to subsection (b) to define new money and refunding issues and to clarify the eligibility of combination issues. In subsection (d)(3), language is added to subparagraph (B) to clarify refunding issues eligible for guarantee and new subparagraph (E) is added regarding refunding transactions. Language regarding the amount of capacity to be held in reserve for emergencies and the treatment of applications for which capacity is insufficient to fully guarantee the proposed bond issue is added to subsection (d)(5). Language regarding the time period to receive bond approval from the Office of the Attorney General is added to subsection (d)(7). Subsection (d)(7) is also modified by adding new subparagraph (D) to specify the requirement that bonds not be represented as guaranteed until the date of the letter granting approval. New paragraph (3) is added to subsection (f) to specify that the eligibility of bonds to receive guarantee is limited to new money, refunding, and combination issues. Subsection (n) regarding transitional provisions is deleted.

In accordance with Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than September 1, 2006, in order to address limitations on the fund's capacity and to clarify administration of the program as soon as possible. The effective date of the adopted amendment is 20 days after filing as adopted.

The following comment was received regarding adoption of the amendment.

Comment. An individual representing SAMCO Capital Markets expressed support for the proposed amendment.

Agency response. The SBOE agreed and took action to adopt the amendment accordingly.

The amendment is adopted under the Texas Education Code, §7.102(c)(33), which authorizes the SBOE to adopt rules as necessary for the administration of the guaranteed bond program as provided under TEC, Chapter 45, Subchapter C.

The amendment implements the Texas Education Code, §7.102(c)(33), and §45.053.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2005.

TRD-200505593
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: December 25, 2005
Proposal publication date: August 5, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.31

The Texas State Board of Examiners of Psychologists adopts the repeal of §461.31, Psychological Associate Advisory Committee (the PAAC), without changes to the proposal as published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4782).

The rule is being repealed in order to adhere to the abolishment of the PAAC set forth by the 79th Texas Legislature.

The adopted repeal reflects the changes in the law.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2005.

TRD-200505548
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 20, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.10

The Texas State Board of Examiners of Psychologists adopts amendments to §463.10, Provisionally Licensed Psychologist, without changes to the proposed text as published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4783).

The amendments are being adopted to allow certain applicants to obtain provisional licensure in a streamlined fashion.

The adopted amendments will allow some applicants to be licensed in a shorter amount of time.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2005.

TRD-200505549
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 20, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 305-7700

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22 TAC §463.13

The Texas State Board of Examiners of Psychologists adopts amendments to §463.13, Requirements for Licensed Out-of-State Applicants, with changes to the proposed text as published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4784).

The amendments are being adopted in adherence to the changes made by the 79th Texas Legislature to the section of the Psychologists Licensing Act regarding licensure as a psychologist.

The adopted amendments will allow some applicants to be licensed in a shorter amount of time.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.13. Requirements for Licensed Out-of-State Applicants.

An applicant who provides documentation that the applicant is actively licensed and in good standing as a psychologist in another jurisdiction must meet the following requirements, which are a substitute for Board rule §463.11:

(1) The applicant must have already obtained provisional licensure and must document that the applicant is a provisionally licensed psychologist in good standing.

(2) Supervised experience. The applicant must affirm that the applicant has received 3,000 hours of experience supervised by a psychologist licensed in the state where the supervision took place. At least half of these hours (1,500 hours) must have been completed after the doctoral degree was conferred or completed. The formal internship year may be met either before or after the doctoral degree was conferred or completed, as indicated on the official transcript.

(3) The applicant must document that the applicant has not received any disciplinary action (apart from disciplinary action related to Continuing Education) by any other jurisdiction and that there is no pending action or complaint against the applicant in any other jurisdiction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2005.

TRD-200505550
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 20, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 305-7700

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22 TAC §463.24

The Texas State Board of Examiners of Psychologists adopts new §463.24, concerning Oral Examination Work Group, without changes to the proposed text as published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4785).

The new section is adopted to comply with changes to the Psychologists' Licensing Act made by the 79th Texas Legislature.

The adopted section will establish a mechanism of review for the oral examination.

No comments were received regarding the adoption of the new section.

The new section is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.2

The Texas State Board of Examiners of Psychologists adopts amendments to §470.2, concerning Definitions, without changes to the proposed text as published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4786).

The amendments are being adopted in adherence to changes made by the 79th Texas Legislature to §501.410(b) of the Act.

The adopted amendments will clarify the composition of disciplinary review panels.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2005.

TRD-200505552
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 20, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 305-7700

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22 TAC §470.21

The Texas State Board of Examiners of Psychologists adopts amendments to §470.21, concerning Disciplinary Guidelines, without changes to the proposed text as published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4786).

The amendments are being adopted to implement the statutory changes in House Bill 1015, 79th Legislative Session concerning placement of a specific Schedule of Sanctions in the Board rules.

The adopted amendments will provide guidelines to the Board in designating disciplinary actions for specific types of violations.

The agency received public comment from William E. Hopkins with Thompson & Knight LLP in a letter dated September 2, 2005.

Mr. Hopkins stated that the proposed rule language was inadequate in its terminology and could potentially result in confusion regarding the process of receiving a final action from an administrative law judge.

Agency's Response

The agency respectfully disagrees in that the proposed language is the same language that is used by the Texas State Board of Medical Examiners (22 Texas Administrative Code §190.2). Furthermore, Board rules cannot contradict the provisions of the Administrative Procedure Act. According to the Attorney General's Handbook on Administrative Law, "a state agency is not prevented from rejecting an Administrative Law Judge's recommended sanction. Within the bounds of its statutory authority, an agency has the broad discretion to determine the appropriate sanction when a violation of the licensing statute or rule has been established. Also, since the proposed rule deals only with disciplinary sanctions, the word "recommendation" applies only to this limited area of agency discretion.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200505553
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 20, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 305-7700

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22 TAC §470.22

The Texas State Board of Examiners of Psychologists adopted new rule §470.22, Schedule of Sanctions, without changes to the proposed text as published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4787).

The new rule is being adopted to implement the statutory changes in HB 1015, 79th Legislative Session concerning placement of a specific Schedule of Sanctions in the Board rules.

The new rule will provide guidelines to the Board in designating disciplinary actions for specific types of violations.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200505554
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 20, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 305-7700

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22 TAC §470.23

The Texas State Board of Examiners of Psychologists adopted new rule §470.23, Aggravating and Mitigating Circumstances, without changes to the proposed text as published in the August 19, 2005, *Texas Register* (30 TexReg 4788).

The new rule is being adopted to implement the statutory changes in HB 1015, 79th Legislative Session concerning placement of a specific Schedule of Sanctions in the Board rules.

The new rule will provide guidelines to the Board in designating harsher penalties for complaints with aggravating factors.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200505555
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 20, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 305-7700

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CHAPTER 473. FEES

22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopted amendment to §473.3, Annual Renewal Fees (Not Refundable), without changes to the proposed text published in the August 19, 2005, *Texas Register* (30 TexReg 4789).

The amendments are being adopted to facilitate an increase in the appropriate budget set forth by the 79th Legislature.

The adopted amendments will allow the agency to comply with the law for increased salaries for state employees.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200505556
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: August 19, 2005
For further information, please call: (512) 305-7700

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §97.101 and §97.102, concerning the statewide immunization of children and immunizations required upon admission of a child to the Texas Department of Criminal Justice, Department of Aging and Disability Services, Department of State Health Services, or the Texas Youth Commission and new §97.221, concerning the Department of State Health Services Immunization Schedule. The amendments to §97.101 and §97.102 and new §97.221 are adopted with changes to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3815).

BACKGROUND AND PURPOSE

The amendments and new section are necessary to comply with Health and Safety Code, §81.023, which requires the State Health Services to develop immunization requirements for children. During the 78th Legislative Session, the Texas Legislature passed House Bill 2292, implemented by Health and Safety Code, §161.004, which allows an additional exemption from immunizations for Texas children and students for reasons of conscience, including a religious belief. The implementation of this legislative mandate required minor revisions to §97.101 and §97.102. The amendments to §97.101 and §97.102 update section numbers for accurate reference of the previous rules updates and also update subsections to accurately reflect changes to the immunization requirements, which were approved in 2004, for Texas child-care facilities, public or private primary and secondary schools, and students enrolled in health-related and veterinary courses in institutions of higher education. The new §97.221, Department of State Health Services Immunization Schedule, also requires revisions to §97.101 and §97.102. The new §97.221, Department of State Health Services Immunization Schedule, will serve as an immunization reference to directors and school nurses at child-care facilities, public or private primary and secondary schools, and institutions of higher education. Physicians and hospitals will also benefit from the adoption of the Department of State Health Services Immunization Schedule as a reference for determining age-appropriate vaccination of their patients. The department will make the schedule available on the Immunization Branch's web site at www.ImmunizeTexas.com.

The department consulted with the Texas Department of Criminal Justice, Texas Youth Commission, Department of Aging and Disability Services, Department of Family Protective Services, Texas Medical Association, Texas Pediatric Society, Texas Academy of Family Physicians, and Texas Education Agency in developing these rules.

SECTION-BY-SECTION SUMMARY

The amendments to §97.101 and §97.102 provide clarifications to the rules and corrections to section numbers within the rule language. Section 97.101 provides a new definition of the immunization record information that providers may be required to furnish on children that have been immunized or referred for immunizations. Section 97.102 adds new language that allows the periodic review of facilities' immunization records and provides a new definition of the immunization record information that facilities are required to maintain. Section 97.221 is a schedule that indicates the recommended ages for routine administration of currently licensed childhood vaccines for children through age 18 years.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: DSHS Mental Health, Lubbock Independent School District, Texas Department of Criminal Justice, Texas Medical Foundation, Texas Pediatric Society, Texas Academy of Family Physicians, and Parents Requesting Open Vaccine Education. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: One commenter stated the rules would have little to no impact on his agencies' operations.

Response. The commission agrees because the agency will have no change in operations. No change was made as a result of this comment.

Comment: Concerning the furnishing of identifying information in §97.101(f) and §97.102(a), four commenters stated identify-

ing information is not readily available and feel it's an unrealistic requirement to provide unobtainable details.

Response: The commission agrees with this comment and has added the words "if available" to those sections.

Comment: One commenter requested that the date the DSHS Immunization Schedule is effective be added to §97.221.

Response: The commission agrees and the effective date has been added to the rule text and the DSHS Immunization Schedule.

The department staff, on behalf of the commission, provided comments, and the commission has reviewed and agrees to the following changes that correct three typographical errors, and add legislatively mandated immunization requirements.

Change: Concerning §97.101(a), the department corrected "§81.081 and §81.082" to "§§81.081 - 81.082".

Change: Concerning §97.102(b), the department correctly used the word "and" rather than the symbol "-", plus, added, "relating to Transfer of Records" for clarification.

Change: Concerning §97.221 Schedule, the department corrected the transposed footnote numbers 7 and 8. Since the department proposed these rules, House Bill 1316, 79th Legislature Regular Session, 2005, mandated changes to the child-care requirements for pneumococcal vaccine and hepatitis A vaccine. The pneumococcal vaccine footnote number 6 "Not required for school/child-care entry" is updated to "Not required for school entry". The pneumococcal vaccine is now required for child-care entry. The hepatitis A vaccine is now required for all children in Texas. Previously, hepatitis A was only required for children in specific geographic areas and high-risk groups. This change is reflected in footnote number 8.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adoption has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER D. STATEWIDE IMMUNIZATION OF CHILDREN BY HOSPITALS, PHYSICIANS, AND OTHER HEALTH CARE PROVIDERS

25 TAC §97.101, §97.102

STATUTORY AUTHORITY

The amendments are adopted under Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

§97.101. Statewide Immunization of Children.

(a) Every person less than 18 years old shall be immunized against vaccine-preventable diseases in accordance with the immunization schedule adopted by the Executive Commissioner of the Health and Human Services Commission as referenced in §97.221 of this title (relating to the Department of State Health Services Immunization Schedule). The immunization requirements are also adopted as a statewide "control measure" for communicable diseases as that term is used in the Health and Safety Code, §§81.081 - 81.082, and as an "instruction of the department" as that term is used in the Health and Safety Code, §81.007.

(b) The vaccine requirements shall be those required for children and students under §§97.61 - 97.72 of this title (relating to Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education). Additional copies of Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education may be obtained from the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284.

(c) All private and public hospitals in Texas that provide health care to children shall:

(1) administer age-appropriate vaccines or refer newborns for immunizations to other health care providers at the time of the newborn screening test;

(2) review the immunization history of every child admitted to the hospital, examined in the hospital's emergency room, or outpatient clinic; and

(3) administer the needed vaccines or refer the child to another health care provider for immunizations.

(d) All physicians and other health care providers who provide health care to children in Texas shall:

(1) review the immunization history of every child examined; and

(2) administer vaccine(s) or refer every child who needs immunizations to another health care provider.

(e) Hospitals, all physicians, and other health care providers, who provide health care to children in Texas, must document in a newborn's or other child's hospital or medical record that the newborn or child has either received age-appropriate immunizations or has been referred for immunizations at the time of the newborn screening or upon a child's admission to the hospital, examination in a hospital emergency room or visit to an outpatient clinic. Hospitals, all physicians, and other health care providers who provide health care to children in Texas must document in a newborn's or other child's hospital or medical record that the:

(1) newborn's or other child's immunization history has been reviewed; and

(2) that the newborn or child has been age-appropriately immunized or that the newborn has been referred to another health care provider for immunizations.

(f) If requested by the local health unit, local health department, public health district, or the department, the provider shall furnish identifying information on those children who have been immunized or referred for immunizations. The information, if available, must include at least the name and date of birth of the child, the child's address, the name and telephone number of a parent or guardian, the month, day, and year of vaccine administration, the name or type of vaccines administered, the name and address of the provider that administered the vaccines; or other evidence of immunity to a vaccine-preventable disease.

(g) Children are exempt from immunizations as referenced in §97.62 of this title (relating to Exclusions from Compliance).

§97.102. Immunizations Required upon Admission of a Child to the Texas Department of Criminal Justice, Department of Aging and Disability Services, Department of State Health Services, or the Texas Youth Commission.

(a) On admission of a child to a facility of the Department of Aging and Disability Services, Department of State Health Services, the Texas Department of Criminal Justice, or the Texas Youth Commission, the facility physician shall review the immunization history of the child, if available, and administer any needed immunization(s) or refer the child for immunization(s) to another health care provider. Required immunizations are those set out in §97.63 of this title (relating to Required Immunizations). Copies of Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education may be obtained from the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3180, (512) 458-7284.

(b) The provisions of §97.62 of this title (relating to Exclusions of Compliance) and §97.66 and §97.69 of this title (relating to Provisional Enrollment and relating to Transfer of Records) apply to this section.

(c) The facility covered by this section shall keep an individual's immunization record during the child's period of admission, detention, or commitment in the facility. Representatives of the department and local health authorities may advise and assist these agencies in meeting these requirements. The department may conduct periodic review of these agencies' identified immunization records in order to allow public health officials to obtain information required for public health purposes. The information, if available, must include at least the name and date of birth of the child, the child's address, the name and telephone number of a parent or guardian, the month, day, and year of vaccine administration, the name or type of vaccines administered, the name and address of the provider that administered the vaccines; or other evidence of immunity to a vaccine-preventable disease.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2005.

TRD-200505583
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: December 22, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 458-7111

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SUBCHAPTER J. DEPARTMENT OF STATE HEALTH SERVICES IMMUNIZATION SCHEDULE

25 TAC §97.221

STATUTORY AUTHORITY

The new rule is adopted under Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

§97.221. Department of State Health Services Immunization Schedule.

This schedule is effective January 1, 2006, and indicates the recommended ages for routine administration of childhood vaccines.
Figure: 25 TAC §97.221

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2005.

TRD-200505584
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: December 22, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 458-7111

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CHAPTER 121. HOSPITAL CERTIFICATION AND CONSULTATION

SUBCHAPTER A. FEDERAL LAWS AND REGULATIONS ON HEALTH INSURANCE FOR THE AGED AND DISABLED

25 TAC §121.1, §121.2

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts the repeal of §121.1 and §121.2, concerning the cross-reference to federal laws and regulations governing health insurance for the Aged and Disabled. The repeal is adopted without changes to the proposal as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3541).

BACKGROUND AND PURPOSE

The repeal is necessary to remove an outdated chapter that was originally promulgated in January of 1976. The original cross-reference to these federal provisions, set forth in the rules, is no longer applicable. The rules, in their current form, serve only to cross-reference federal laws and regulations pertaining to the regulatory activities of the department and the former Department of Human Services, now Department of Aging and Disability Services. There is no legal requirement for the cross-reference to continue and thus repeal is needed. Further, the reference to the department in the rules cites the Department of Health Resources, which is an outdated reference. Some of the referenced regulations have been recodified or no longer exist. The repeal of these sections is necessary to align the department's rules more accurately with programs currently housed at the department.

SECTION-BY-SECTION SUMMARY

The repeal of §121.1 and §121.2 is necessary to align the department's rules with the programs that currently exist under the department's jurisdiction. Those sections that are the subject of this repeal represents only a cross-reference to federal provisions of a program that are no longer applicable to the department.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed repeal of the rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adoption has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The adopted repeal is authorized by Texas Government Code, §531.0055; and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2005.

TRD-200505582
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: December 22, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 458-7111

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

SUBCHAPTER A. PURPOSE AND GENERAL INFORMATION

30 TAC §328.2

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §328.2. The amendment is adopted *without changes* to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6228), and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

Senate Bill (SB) 1298, 79th Legislature, 2005, amended Texas Occupations Code, §1956.103, by adding subsection (c), which allows for the sale or transfer of scrap metal that contains a fuel tank without obtaining from the metal recycling entity a written acknowledgment that the scrap metal contains a fuel tank, and which allows for the sale or other transfer of a motor vehicle that has a fuel tank to a metal recycling entity, provided in both cases that the fuel tank has been completely drained and rendered unusable. In order to define the meaning of the terms "Completely drained" and "Unusable," the commission amends §328.2 by adding definitions for these two terms. SB 1298 also amends Texas Occupations Code, §1956.104(3), to require recycling facilities to post notice that it is a violation of state law to sell a fuel tank that has not been drained and rendered unusable. SB 1298 §3(a) requires the commission to adopt the standards required under Texas Occupations Code, §1956.103(c) by December 1, 2005.

SECTION DISCUSSION

The adopted amendment to §328.2, Definitions, adds the definitions of "Completely drained" and "Unusable," and renumbers the existing definitions to accommodate these new definitions. Under adopted §328.2(2), for the purposes of Texas Occupations Code, §1956.103(c), a fuel tank will be considered to be completely drained if it meets three criteria. First, all fuel must be removed from the tank using commonly employed practices for removing fuel from a tank, such as pouring, pumping, or aspirating. Second, the procedure used to remove the fuel from the tank must conform with accepted industry practices. Third, the tank must be emptied of all accumulated sludges or residues, and must be purged of all residual vapors in accordance with accepted industry procedures commonly employed for the type of fuel. Existing definitions in §328.2(2) - (5) are renumbered as §328.2(3) - (6), respectively. Under adopted §328.2(7), the term "Unusable" is defined, for the purposes of Texas Occupations Code, §1956.103(c), as a fuel tank that has been completely drained and can no longer be used because it has been punctured, ruptured, crushed, shredded, or has other significant structural changes or alterations. The two new definitions will apply only to the sale or transfer of a fuel tank to a metal entity on or after January 1, 2006.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the rule is to protect the environment from possible spills of a potentially hazardous material, motor vehicle fuel, and to reduce risks to human health from environmental exposure to motor fuel. However, it is not anticipated that the rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that the rule does not meet the definition of a major environmental rule.

Furthermore, even if the rule did meet the definition of a major environmental rule, the rule is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the rule does not meet any of these requirements. First, there are no applicable federal standards that this rule would address. Second, the rule does not exceed an express requirement of state law in Texas Occupations Code, §1956.103. Third, there is no delegation agreement that would be exceeded by the rule. Fourth, the commission adopts this rule under the specific authority of Texas Occupations Code, §1956.103. This rule is also adopted under the authority of Texas Health and Safety Code, §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act, and §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste. Therefore, the commission does not adopt the adoption of the rule solely under the commission's general powers.

The commission invited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rule and performed an assessment of whether the rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rule is to protect the environment from possible spills of a potentially hazardous material, motor vehicle fuel, and to reduce risks to human health from environmental exposure to motor fuel. The rule would substantially advance this stated purpose by requiring that fuel tanks on motor vehicles intended for scrap metal recycling entities be properly drained of fuel, and emptied of accumulated sludges or residues.

Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property because the rule does not affect real property. This rule exercises commission jurisdiction over municipal solid waste and hazardous waste and the reuse and recycling of municipal solid waste and hazardous waste.

There are no burdens imposed on private real property, and the benefits to society are increased safety at metal recycling facilities and the prevention of pollution. In addition, the rule does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this rule will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action or authorization identified in §505.11(a)(6). Therefore, the rule is not subject to the Texas Coastal Management Program.

PUBLIC COMMENTS

The proposed rule was published for comment in the September 30, 2005, issue of the *Texas Register*. A public hearing on this proposal was not held. No public comments were received on the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Occupations Code, §1956.103, which prohibits the sale of a motor vehicle for scrap metal unless the fuel tank has been completely drained and rendered unusable in accordance with commission rules; SB 1298, §3, which directs the TCEQ to adopt standards required under Texas Occupations Code, §1956.103, by December 1, 2005; Texas Solid Waste Disposal Act in Texas Health and Safety Code, §361.022, which sets public policy in the management of municipal solid waste to include reuse or recycling of waste; §361.023, which sets public policy in the management of hazardous waste to include reuse or recycling of waste; §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; §361.017, which establishes the commission's jurisdiction over all aspects of the management of industrial solid waste and hazardous municipal waste with all powers necessary or convenient to carry out the responsibilities of that jurisdiction; and §361.024, which provides the commission with rulemaking authority.

The adopted amendment implements Texas Occupations Code, §1956.103 and SB 1298, §3.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2005.

TRD-200505578
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 22, 2005
Proposal publication date: September 30, 2005
For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 8. GAS MARKETING PROGRAM

31 TAC §§8.1 - 8.4, 8.8

The General Land Office (GLO) adopts the amendments to Chapter 8, relating to Gas Marketing Program, §8.1, relating to Scope of Rules, §8.2, relating to Definitions, §8.3, relating to

Contract Submissions Requirements, §8.4, relating to Review Criteria for All Contracts and §8.8, relating to Gas Usage Data Form. The amendments are adopted without changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6234) and will not be republished.

The amendments to Chapter 8 update references to legal citations and the mailing address of the Director--State Energy Marketing Program.

No comments were received regarding any of the proposed amendments to Chapter 8.

The amendments are adopted under Texas Natural Resources Code, §31.051, which authorizes the commissioner to make and enforce rules consistent with the law.

The Texas Government Code, §2001.006 and Texas Natural Resources Code §§31.401, 52.133, and 52.171 - 52.190 are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505502
Trace Finley
Policy Director
General Land Office
Effective date: December 19, 2005
Proposal publication date: September 30, 2005
For further information, please call: (512) 475-1859

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §65.310

The Texas Parks and Wildlife Department (the department) adopts an amendment to §65.310, concerning Means, Methods, and Special Requirements, without changes to the proposed text as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 7007).

In the August 5, 2005, issue of the *Texas Register* (30 TexReg 4482), the department adopted an amendment to §65.310 that reinstated specific language from federal regulations delineating the means and methods that are lawful and unlawful for the take of migratory game birds. The federal rules consist of a list of lawful means, methods, and manners and a list of unlawful means, methods, and manners. In the process of that rulemaking several provisions were inadvertently omitted and should not have been omitted: the prohibition on the possession and/or use of non-toxic shot for the hunting of waterfowl, the requirement that the head or one fully-feathered wing remain on all migratory game birds except doves until the birds reach the possessor's personal residence, and a prohibition on the placement of bait to cause, induce, or allow hunting over a baited area. The amendment as adopted restores those provisions. The prohibition of toxic shot is necessary to maintain parallelism with federal law; toxic shot is prohibited by 50 CFR §20.21(j). The requirement that a head or one fully-feathered wing remain on all migratory game birds except doves until the birds reach the possessor's personal residence is also necessary to be consistent with federal law; the federal requirement is located at 50 CFR §20.43. The department notes that while these provisions were omitted from the current rule, they are federal requirements that are in full force and effect and are enforceable by state wardens acting under federal commission.

The provision prohibiting the placement of bait is a state requirement that was promulgated in response to the placement of bait on, over, or near an area by a third party without the knowledge of persons who subsequently hunt over or near the area, thus placing the unsuspecting hunter in jeopardy of being cited for hunting over a baited area. The rule is necessary to discourage unscrupulous conduct. The department notes that while this particular state provision was omitted from the current rule, all federal requirements regarding baiting remain in full force and effect and are enforceable by state wardens acting under federal commission.

The amendment also corrects an internal reference. The current rule states that the provisions of subsection (a) are subject to the control of subsection (b). In fact, the provisions of subsection (a) are subject to the control of subsections (b) and (c). The amendment is necessary for the sake of accuracy.

The amendment will function by making state law consistent with federal law, and by accurately indicating exceptions to certain provisions.

The department received no comments concerning adoption of the proposed amendment.

The amendment is adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 2005.

TRD-200505585
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: December 22, 2005
Proposal publication date: October 28, 2005
For further information, please call: (512) 389-4775

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PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.4

The Texas State Soil and Water Conservation Board (State Board) adopts amendments to 31 TAC §523.4 to establish a time period for which the State Board shall refer a complaint to the Texas Commission on Environmental Quality (TCEQ) if the person upon whom a complaint was filed fails or refuses to take warranted corrective action. The time period is 45 days. Adoption of 31 TAC §523.4 is without change from the proposed text as published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4948). The text of the rule will not be republished.

This amended rule adoption establishes a time period for which the State Board must refer a complainant to the TCEQ when an individual fails or refuses to take corrective action following notification that corrective action is warranted to address a valid complaint.

The adopted rule will establish a consistent time period applicable to all individuals involved with and/or concerned with our Water Quality Management Program.

No comments were received regarding the adoption of this rule.

The new rule is adopted under §201.020, Agriculture Code, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 30, 2005.

TRD-200505557
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Effective date: December 20, 2005
Proposal publication date: August 26, 2005
For further information, please call: (254) 773-2250, ext. 252

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER D. APPRAISAL REVIEW BOARD

34 TAC §9.804

The Comptroller of Public Accounts adopts new §9.804, concerning arbitration of appraisal review board determinations, with changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5926).

The new section addresses the creation of a statewide registry of qualified arbitrators, the appointment of arbitrators, and the payment of arbitrators' fees or deposit refunds by the Comptroller of Public Accounts, as well as prescribes two forms.

The new section is adopted to implement legislation enacted during the 79th Legislative Session, Regular Session, by House Bill 182 and Senate Bill 1351. The section is proposed for adoption in compliance with the mandates of Tax Code, §§41A.04, 41A.09(e), and 41A.13.

The new section establishes the procedures for qualified arbitrators to register with the Comptroller of Public Accounts for appointment to conduct binding arbitrations at the request of property owners who are dissatisfied with appraised or market value determinations by county appraisal review boards. The section also prescribes how the arbitrator registry will be maintained and made accessible to property owners and appraisal districts.

The new section creates a process for the Comptroller of Public Accounts to appoint arbitrators and substitute arbitrators. It provides a process for making payments of arbitrators' fees and for refunding deposits as provided by law.

The new section provides for the contents of two forms required by law to be prescribed by rule: one for property owners to request binding arbitration of disputes with county appraisal review boards, and the other for arbitrators to use in making arbitration awards.

The comptroller has corrected formatting and consistency errors and clarified instructions on the Request for Binding Arbitration (Form AP-219). Specifically, the general instructions are clarified to explain the Tax Code chapter reference in the first sentence, as well as to emphasize that the requests must be filed with county appraisal districts, not with the comptroller of public accounts. The term "cashier's check" is clarified throughout the request form to be consistent with the adopted rule that provides that the deposit must be in the form of a check issued and guaranteed by a banking institution, such as a cashier's check or teller's check, or a money order. The property owner or agent checklist and the section to be completed by the appraisal district are changed to clarify the filing deadline and to be consistent and accurate. As the result of comments from several appraisal district staff members, the property information section is reformatted to include the property account number, as well as its address or location, and to list the type of real property being appealed consistently with the list on the arbitrator application, so that the property can be identified properly. The numbering of items on the request form is also corrected to reflect changes in format.

The comptroller has corrected an omission in the rule concerning the method of delivery of the requests for binding arbitration to appraisal districts. Subsection (b)(3) is revised to state that the requests must be submitted by hand delivery or by certified first-class mail to appraisal districts.

The comptroller has corrected administrative errors in the method of notifying arbitrators of their appointments. The rule proposed that arbitrators would be notified electronically or by regular first-class mail or facsimile transmission. The comptroller's automated system of arbitrator appointment as proposed in the rule will not permit the electronic notification of arbitrators by e-mail or facsimile transmission. In order to streamline the

process and insure that arbitrators are notified timely of appointments, first-class mail is the only administratively acceptable means of delivery. Subsection (d) is corrected to limit the notification of arbitrators concerning appointments to regular first-class mail. In addition, the notification by the comptroller will be made only to the arbitrator. The arbitrator will be required to notify the owner or agent and the appraisal district of the appointment. Subsection (d)(2), (3), (4), and (5) are corrected to streamline the notification process, and Subsection (d)(6) is omitted.

During the proposed period, comments were received and considered by the comptroller.

An appraisal district submitted a comment that the effect of an arbitrator's determination of value on the payment of his or her fee should not be provided to the arbitrator. The comment indicated that the integrity of the process could be jeopardized and that appraisal districts would be unfairly treated. The comptroller accepts this comment. The Arbitration Determination and Award (Form 50-704) prescribed by the rule is revised to omit language that stated specifically whether a property owner would receive a deposit refund or would pay the arbitrator's fees from the deposit as a result of a value determination. The form is also revised to clarify the dismissal provisions and to provide a space for the arbitrator to indicate that a request for binding arbitration has been withdrawn by the owner or agent less than 14 days from the first scheduled arbitration proceeding.

A law firm submitted a comment that proposed subsection (e)(1) should be amended to omit the requirement that appraisal review board hearing tapes be provided to the arbitrator and owner or agent by the appraisal district. The firm indicated that the cost, time, and mechanical difficulties associated with securing and copying tapes would create problems and would not contribute to the process. The comptroller accepts the comment and omits the requirement that hearing tapes be provided to arbitrators by appraisal districts.

A property tax consultant submitted a comment that the "equity argument" should be considered as the subject of binding arbitration. The consultant stated that inclusion of the issue would offer homeowners, in particular, a fair method of pursuing fair valuation. In order to address the comment, the term "appraisal" would have to be defined to include unequal appraisal determinations. Tax Code §41A.01 provides that a property owner has the right to appeal through binding arbitration an appraisal review board order determining a protest concerning the appraised or market value of real property if the appraised or market value of the property as determined by the order is $1 million or less and the appeal does not involve any matter in dispute other than the determination of the appraised or market value or the property. Unequal appraisal protests are separately listed actions under Tax Code §41.41(a)(2), differing from the appraised or market value protests listed under Tax Code §41.41(a)(1). Unequal appraisal is a determination based on level of appraisal rather than market value, according to Tax Code §41.43 and has a separate judicial remedy (Tax Code §42.26) from the remedy provided for excessive appraisals (Tax Code §42.25). Unequal appraisal determinations are not based on appraised or market value definitions under Tax Code §1.04. For these reasons, unequal appraisal protests and their appraisal review board determinations are not subject to binding arbitration as an alternative to judicial review. The comptroller declines to make changes in response to this comment.

A lawyer submitted a comment that proposed subsection (b)(3) should be clarified to define what a cashier's check may be. The comptroller accepts the comment and has revised the term to refer to a check issued and guaranteed by a banking institution, such as a cashier's or teller's check.

The same lawyer commented that proposed subsection (b)(6) should provide authority to the comptroller to deny a request for binding arbitration if the appraisal review board protest concerned a matter not subject to Tax Code §41.41(a)(1), or if the property owner or agent filed an appeal in district court for the subject property in the applicable tax year. The comptroller accepts the comment and adds the authority to the subsection.

The same lawyer commented that a paragraph should be added to proposed subsection (d) to reiterate statutory language requiring appraisal districts to notify the comptroller not later than the 20th day after the date the parties receive a copy of the arbitration registry or notice of the comptroller's web site, whichever is later, that an arbitrator was selected or agreement could not be reached. The comptroller accepts the comment and adds new paragraph (1) and renumbers the remaining paragraphs.

The same lawyer commented that proposed subsection (e)(6) should be amended to include authority for the arbitrator to dismiss an arbitration if the appraisal review board order determining protest did not concern a protest brought under Tax Code §41.41(a)(1) for real property valued at $1 million or less. The comptroller accepts the comment and amends the language accordingly.

The same lawyer commented that a paragraph should be added to proposed subsection (g) to require that the comptroller refund the deposit to the owner or agent if the comptroller denies a request for arbitration according to the provisions of proposed subsection (b)(6) dealing with failure to file the request timely, to pay taxes properly, to request arbitration for only an appraised or market value determination, or to provide all information requested on the form after a written or verbal request. The comptroller accepts the comment and adds a new paragraph (7) and renumbers paragraph (7) to (8).

The same lawyer commented that the definition of "agent" in proposed subsection (a)(2) should be expanded to include appraisal district employees. Language is proposed that would include district employees registered with the Texas Board of Tax Professional Examiners under Occupations Code, Chapter 1151, who have been designated by the chief appraiser to represent the district in the arbitration proceedings. Because Tax Code §41A.08(b) provides that employees of appraisal districts may represent parties in arbitration and because of the ambiguity in the rule regarding appraisal district representation in arbitration proceedings, the comptroller accepts the comment. The definition of "agent" is amended to include certain appraisal district employees who are designated by the chief appraiser at or before the time of the arbitration proceedings and are licensed.

The same lawyer commented that more specific arbitration hearing procedures should be added. Concern was expressed that an exchange of evidence should occur in advance of the hearing and that guidelines should be included regarding the record of the arbitration proceedings. Specifically, the comment includes a requirement that an arbitrator should deliver a brief written summary of the procedures to be used during the hearing if requested; exhibit lists should be prepared by the parties and exchanged 30 days before the hearing; rebuttal evidence should be exchanged 15 days before the hearing; any other evidence

presented at the hearing would be inadmissible unless permitted by agreement of the parties; the proceedings are subject to being recorded; copies of original documents must be authenticated to be introduced; and official notice of facts are permitted. The comptroller accepts these comments by adding a new subsection (e)(3) to include these hearing procedures, with modification to the suggested deadlines that recognizes that the applicable provision of the Texas Civil Practices and Remedies Code §171.044 permits the arbitrator to schedule a hearing with only 5 days notice. The paragraphs following the new subsection (e)(3) are renumbered accordingly.

The same lawyer commented that arbitrators should be authorized to swear witnesses under oath and that the parties should be authorized to offer evidence, examine and cross-examine witnesses, and present arguments. These matters are provided in Texas Civil Practices and Remedies Code §171.047 as cited in proposed subsection (e)(2) and need not be repeated. The comptroller declines to add these duplicative provisions.

An appraisal firm submitted a comment that the definition of agent is inconsistent with proposed subsections (e)(2) and (e)(3). The definition requires that an agent be identified with the request for binding arbitration and the other subsections permits an agent to be later identified to represent the property owner at the hearing. The comptroller accepts the comment. In order to reconcile the inconsistency, proposed subsections (a)(2) and (b)(3) are amended to require a written authorization to be attached to the request for binding arbitration in order for an agent to file the request on behalf of a property owner (rather than simply to represent the owner).

The same appraisal firm commented that the proposed rule does not address the method and timing for authorizing an agent to represent an appraisal district. The comment from the lawyer concerning the definition of "agent" included the same issue. The comptroller accepts this comment and amends the definition of "agent" to permit the designation of certain appraisal district employees at or before the time of the arbitration proceedings.

The same appraisal firm commented that appraisal firm contractors should be treated as appraisal district employees for purposes of representing the district in arbitration proceedings. The comptroller accepts this comment and amends the definition of "agent" to include appraisal district contractors.

The same appraisal firm commented that the rule should clarify how the $1 million value threshold for the appraised or market value of real property should be applied to royalty and working interests of mineral property. Tax Code §41A.01 is clear that appraisal review board orders determining protests of real property valued at $1 million or less are eligible for binding arbitration. Whether or not the accounts are royalty or working interests is not relevant; only if the interests are real property can they be the subject of binding arbitration. The firm also asked whether value changes made by arbitrators should apply to other accounts. Just as a judicial determination under Chapter 42, Tax Code, only affects the applicable property, an arbitrator's determination would only affect the subject property. Because the law is unambiguous on these matters, the comptroller declines to make any changes in response to this comment.

The same appraisal firm commented that arbitrators should demonstrate technical competency or training, in addition to the requirements of law and the proposed rule, in order to conduct arbitration hearings regarding oil, gas, or other mineral properties. The law does not contemplate more training than the licensure in real estate sales or brokerage and appraisal. Appraisal review boards and the judiciary are not required to receive special training in these and other technical appraisal matters and must make value determinations nonetheless. The comptroller declines to make any changes in response to this comment.

The same appraisal firm commented that persons who work for appraisal firms or who are under contract with appraisal districts should not be eligible to serve as arbitrators, just as employees of appraisal districts are prohibited. The comptroller accepts this comment and amends proposed subsection (c)(3) and proposed subsection (d)(6) accordingly. The firm also commented that persons who had recently protested the value of property should be ineligible to serve as arbitrators. The comptroller declines to make any changes in response to this comment.

The same appraisal firm commented that arbitrators who fail to report the loss of licensure should not be paid and that all determinations made during the time that the licensure was lost should be invalid, requiring the appointment of substitute arbitrators to reconsider the proceedings. Because of the difficulties in determining the reasons for the revocation or suspension of licenses and other matters relating to an arbitrator's qualifications, care must be taken in invalidating determinations. Removing arbitrators from the registry is an adequate remedy for a failure to meet the qualifications of law and the rule. The comptroller declines to make any changes in response to this comment.

The same appraisal firm commented that the notification method for arbitrator acceptance in proposed subsection (d)(7) is ambiguous. The comptroller accepts this comment and clarifies that the comptroller must be notified of the acceptance in writing and that the notification must be delivered to the comptroller electronically, by facsimile transmission, or by regular first-class mail.

The same appraisal firm commented that the ex parte communication prohibition is unclear. The concern is whether the review of the appraisal review board hearing file provided to the arbitrator prior to the hearing constitutes an ex parte communication. In addition, the firm commented that the owner, appraisal district, or their agents should likewise be prohibited from communicating with the arbitrator. The timing of the communication was also the subject of the comment. The comptroller accepts this comment and clarifies proposed subsection (e)(5) to permit the arbitrator's review of the appraisal review board hearing filed prior to the arbitration proceeding and to prohibit owners, appraisal districts, or their agents from communicating with arbitrators prior to the hearing. The comptroller declines to change the timing of the communications.

The same appraisal firm commented that Subchapter B of Chapter 23, Tax Code, should be included in the list of subchapters that must be followed by an arbitrator in making appraised value determinations. Specifically, the comment referred to the need to adhere to the appraisal provisions of §23.175, Tax Code. The comptroller accepts the comment and amends proposed subsection (f)(2) accordingly.

A legislator submitted a comment that property owners should be allowed to designate certified public accountants to represent them in binding arbitration proceedings. The legislator indicated that there was no legislative intent to exclude certified public accountants from representation and they should be added to the list of agents defined in the rule. The comptroller accepts the comment and amends proposed subsection (a)(2) to amend the definition of "agent."

The new section is adopted under and implements Tax Code, Chapter 41A.

§9.804. Arbitration of Appraisal Review Board Determinations.

(a) Definitions. In this section:

(1) "Owner" means a person or entity having legal title to property. It does not include lessees who have the right to protest property valuations before county appraisal review boards.

(2) "Agent" means an attorney licensed by the State of Texas; a real estate broker or salesperson licensed under Occupations Code, Chapter 1101; a real estate appraiser licensed or certified under Occupations Code, Chapter 1103; an appraisal district employee registered under Occupations Code, Chapter 1151, or an appraisal district contractor; a property tax consultant registered under Occupations Code, Chapter 1152; or a certified public accountant certified under Occupations Code, Chapter 901. In order for an agent to file a request for binding arbitration, a written statement signed by the owner authorizing the agent to act specifically in requesting arbitration, receiving deposit refunds, and representing the owner in arbitration proceedings shall be submitted with the request for arbitration. The written statement must include the agent's license or certification number and identify the appropriate licensing board. In order for an agent to represent an appraisal district, a written statement signed by the chief appraiser authorizing the agent to represent the district in the arbitration proceedings shall be submitted in writing to the property owner and the arbitrator at or before the time of the arbitration proceeding.

(3) "Binding arbitration" means a forum in which each party to a dispute presents the position of the party before an impartial third party who is appointed by the comptroller as provided by Tax Code, Chapter 41A, and who renders a specific award that is enforceable in law and may only be appealed as provided by Civil Practices and Remedies Code, §171.088, for purposes of vacating an award.

(4) "Appraised value" has the meaning included in Tax Code, §1.04(8).

(5) "Market value" has the meaning included in Tax Code, §1.04(7).

(6) "Appraisal district" has the meaning included in Tax Code, §6.01.

(7) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(b) Request for Arbitration.

(1) The appraisal review board of an appraisal district shall include a notice of the owner's right to binding arbitration and a copy of the request for binding arbitration form prescribed by this section with the notice of issuance and the order determining a protest filed pursuant to Tax Code, §41.41(a)(1), if the value determined by the order is $1 million or less.

(2) An owner may appeal through binding arbitration an appraisal review board order determining a protest filed pursuant to Tax Code, §41.41(a)(1), concerning the appraised or market value of real property if the value determined by the order is $1 million or less. A protest concerning unequal appraisal or a motion for correction of an appraisal roll is not a protest concerning the appraised or market value of real property. A protest concerning the qualification of property for exemption or special appraisal is also not a protest concerning the appraised or market value of real property.

(3) A request for binding arbitration must be made on the form prescribed by this section and signed by an owner or agent. If an agent files a request for binding arbitration, a written authorization signed by the owner must be attached to the request for binding arbitration. Failure to attach a complete authorization disqualifies the agent from requesting the arbitration. The request for binding arbitration form must be filed with the appraisal district responsible for appraising the real property not later than the 45th calendar day after the date the owner receives the order determining protest from the appraisal review board as evidenced by certified mail receipt. A deposit of $500 in the form of a money order or a check issued and guaranteed by a banking institution, such as a cashier's or teller's check, payable to the Comptroller of Public Accounts must accompany the request for binding arbitration. Personal check, cash, or other form of payment shall not be accepted. The request for binding arbitration must be timely submitted to the appraisal district by hand delivery or by certified first-class mail.

(4) The appraisal district shall reject a request for binding arbitration if the owner or agent fails to attach the required deposit in the manner required by this section. In such event, the appraisal district shall return the request for binding arbitration with a notification of the rejection to the owner or agent by regular first-class mail or other form of delivery requested by the owner or agent.

(5) The chief appraiser of the appraisal district must submit requests for binding arbitration with the required deposits to the comptroller not later than the 10th calendar day after the date the appraisal district receives the requests. The chief appraiser must assign an arbitration number to each request in accordance with procedures and utilizing forms developed by the comptroller. The chief appraiser must certify receipt of the request and state in the certification whether or not the request was timely filed; the request was made on the form prescribed by this section; the deposit was submitted according to this section; and any other information required by the comptroller. In addition, the chief appraiser must submit to the comptroller a copy of the order determining protest with each request. The chief appraiser must submit the requests for arbitration to the comptroller by hand delivery or certified first-class mail, and must simultaneously deliver a copy of the submission to the owner by regular first-class mail.

(6) Failure by the owner to file the request for arbitration timely with the appraisal district shall result in the denial of the request by the comptroller. Failure by the owner to pay taxes on the property subject to the appeal in an amount equal to the amount of taxes due on the portion of the taxable value of the property that is not in dispute before the delinquency date shall result in the denial of the request for arbitration by the comptroller. If the property owner or agent did not file a protest pursuant to Tax Code, §41.41(a)(1), concerning the appraised or market value of real property determined by the appraisal review board to be valued at $1 million or less, the comptroller shall deny the request for binding arbitration. If the property owner or agent filed an appeal in district court concerning the property subject to a request for binding arbitration, the comptroller shall deny the request. Failure by the owner to provide all information required by the prescribed form, including but not limited to the signature of the owner or agent and the written authorization of the owner designating an agent, may result in the denial of the request by the comptroller if the information is not provided in a timely manner, not to exceed 10 calendar days, after a written or verbal request by the comptroller to the person requesting arbitration to supplement or complete the form has been made.

(7) On receipt of the request for arbitration, the comptroller shall determine whether to accept the request, deny the request, or request additional information. The comptroller shall notify the owner or agent and appraisal district of the determination. If the comptroller accepts the request, the comptroller shall notify the owner or agent and the appraisal district of the Internet address of the comptroller's website at which the comptroller's registry of arbitrators is maintained and

may be accessed. The comptroller shall request in the notice that the parties attempt to select an arbitrator from the registry of arbitrators. The notice shall be delivered electronically, by facsimile transmission, or by regular first-class mail. If requested by the owner or appraisal district, the comptroller shall deliver promptly a copy of the registry of arbitrators in paper form to the owner or the appraisal district by regular first-class mail.

(c) Registry of Arbitrators.

(1) A person seeking to be listed in the comptroller's registry of arbitrators must submit a completed application on a form provided by the comptroller on or before each renewal date for the license or certificate issued to the applicant under Occupations Code, Chapter 1101 or Chapter 1103. By submitting the application and any documentation required on the prescribed form, the applicant attests that he or she has completed at least 30 hours of training in arbitration and alternative dispute resolution procedures from a university, college, or legal or real estate trade association; is licensed as a real estate broker or salesperson under Occupations Code, Chapter 1101, or is licensed or certified as a real estate appraiser under Occupations Code, Chapter 1103; agrees to conduct an arbitration for a fee that is not more than 90% of the amount of the $500 arbitration deposit; and agrees to notify the comptroller of any change in the applicant's qualifications. The attestation shall remain in effect until the following license or certificate renewal date. A new application must be submitted on or before each renewal date for an arbitrator to continue to be named in the registry.

(2) A person applying for inclusion in the comptroller's registry of arbitrators must agree to conduct arbitration hearings as required by Tax Code, §41A.08 and §41A.09, and in accordance with the limitations indicated in the application and by this section. The application must state that false statements provided by applicants may result in misdemeanor or felony convictions. The application must also state that the comptroller may remove a person from the registry of arbitrators at any time due to failure to meet statutory qualifications or to comply with requirements of this section, or for good cause as determined by the comptroller.

(3) The comptroller shall deny an application if it is determined that the applicant does not qualify for listing in the arbitration registry or if inclusion of the applicant in the arbitration registry would otherwise not be in the interest of impartial arbitration proceedings. A person is ineligible to be listed as an arbitrator if the person is a member of a board of directors of any appraisal district or an appraisal review board in the state; an employee, contractor, or officer of any appraisal district in the state; a current employee of the comptroller; or a member of a governing body, officer, or employee of any taxing unit in the state.

(4) If the application is approved, the applicant's name and other pertinent information provided in the application and the applicant's professional resume or vitae shall be added to the comptroller's registry of arbitrators. The registry may include the arbitrator's experience and qualifications, the geographic areas in which the arbitrator agrees to serve, and other information useful for property owners and county appraisal district personnel in selecting an arbitrator. The arbitrator may be required to conduct arbitrations regionally in order to be included in the registry.

(5) The comptroller must notify the applicant of the approval or denial of the application or the removal of the arbitrator from the registry as soon as practicable and must provide a brief explanation of the reasons for denial. The applicant may provide a written statement of why the denial should be reconsidered by the comptroller within 30 calendar days of the applicant receiving the denial. The comptroller may approve the application if the applicant provides information to justify the approval. If the application is subsequently approved, the comptroller shall notify the applicant as soon as practicable.

(6) Each person who is listed as an arbitrator in the comptroller's registry must report to the comptroller in writing any material change in the information provided in the application within 30 calendar days of the change. A material change includes, but is not limited to a change in address, telephone number, e-mail address, website, loss of required licensure, incapacity, or other condition that would prevent the person from professionally performing arbitration duties. Failure of the arbitrator to report a material change may result in the immediate removal of the arbitrator from the current registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this paragraph shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in the registry.

(7) Owners, agents, and appraisal districts are responsible for verifying the accuracy of the information provided in the arbitrator registry in attempting to agree on an arbitrator. If the information is found to be inaccurate by the owners, agents, or appraisal districts, such fact must be communicated to the comptroller as soon as practicable in order that the registry may be corrected. Inclusion of an arbitrator in the comptroller's registry is not and shall not be construed as a representation by the comptroller that all information provided is true and correct and shall not be construed or represented as a professional endorsement of the arbitrator's qualifications to conduct arbitration proceedings.

(8) The registry shall be maintained on the comptroller's Internet website or in non-electronic form and will be updated within 30 calendar days of the date that arbitrator applications are approved or updated and processed by the comptroller.

(d) Appointment of Arbitrators.

(1) The appraisal district shall notify the comptroller not later than the 20th calendar day after the date the parties receive a copy of the registry or the notice of the comptroller's Internet address of the registry website, whichever is later, that an arbitrator was selected by the parties by agreement or that an agreement could not be reached.

(2) The comptroller shall promptly appoint an arbitrator selected by agreement of the owner or agent and the appraisal district. The notification of the appointment must be transmitted by regular first-class mail to the arbitrator. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(3) If an appraisal district notifies the comptroller that the owner or agent and the appraisal district have been unable to agree to an arbitrator, the comptroller shall appoint an arbitrator from the registry within 20 business days from such notification and inform the arbitrator by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(4) If the appraisal district fails to notify the comptroller of the selection of an arbitrator or the failure to agree to an arbitrator timely, the comptroller shall appoint an arbitrator from the registry within 20 business days of the date the comptroller becomes aware of the failure of the appraisal district and owner or agent to comply with the requirements of law. The arbitrator shall be notified of the appointment by the comptroller by regular first-class mail. The arbitrator shall notify the owner or agent and the appraisal district promptly of the appointment.

(5) The appointment of an arbitrator by the comptroller shall be made according to preferences included in arbitrator applications geographically and by random selection.

(6) An arbitrator may not accept an appointment and may not continue an arbitration after appointment if the arbitrator has an interest in the outcome of the arbitration or if the arbitrator is related to the owner, an officer, employee, or contractor of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573. The owner or appraisal district may request a substitute arbitrator before the arbitration proceedings begin for good cause shown, including but not limited to demonstrated conflicts of interest as defined by Local Government Code, Chapter 171, or for other reasons that could affect the impartial treatment of the parties to the arbitration.

(7) The comptroller must be notified, in writing, within 5 business days of the arbitrator's receipt of the appointment that the arbitrator is unable or unwilling to conduct the arbitration because of a conflict of interest described by paragraph (6) of this subsection, or for any other reason; or that the appointment is accepted. The notification must be delivered to the comptroller electronically, by facsimile transmission, or by regular first-class mail. If an acceptance or request for substitute appointment is not received within 5 business days, the comptroller shall presume that the appointment has been refused. If the arbitrator refuses the appointment, the comptroller shall appoint a substitute arbitrator from the registry within 10 business days of the receipt of the arbitrator's refusal. The process of appointment of substitute arbitrators shall continue in this fashion until an acceptance is obtained. A refusal to accept an arbitration appointment may be considered by the comptroller in evaluating subsequent requests for arbitration and appointments.

(e) Provision of Arbitration Services.

(1) The appraisal district must provide to the arbitrator and the owner or agent a copy of the appraisal review board record on the protest that is the subject of the arbitration, including all evidence. Such materials must be provided as soon as practicable after the appraisal district is notified of the appointment of the arbitrator. No costs shall be assessed for providing such materials.

(2) The arbitrator may require written agreements with the appraisal district and the owner concerning provision of arbitration services, including but not limited to the time, place, and manner of conducting and concluding the arbitration. If the arbitration is conducted in person, the proceeding must be held in the county where the appraisal district office is located and from which the appraisal review board order determining protest was issued, unless the parties agree to another location. The arbitrator must give notice and conduct arbitration proceedings in the manner provided by Civil Practice and Remedies Code, §§171.044, 171.045, 171.046, 171.047, 171.049, 171.050, and 171.051, and shall continue a proceeding if both parties agree to the continuance and may continue a proceeding for reasonable cause, including but not limited to representation of an owner by an agent who was not identified in the request for binding arbitration at the arbitration proceeding. The arbitrator may request that the parties produce evidence and additional documents not included in the appraisal review board record.

(3) The arbitrator shall decide to what extent the arbitration hearing procedures are formal or informal and shall deliver a brief written summary of the procedures to be used at the hearing, upon the request of a party. The parties shall be allowed to record the proceedings by audiotape, but may record them by videotape only with the consent of the arbitrator. The parties shall exchange exhibit lists and copies of all evidence to be offered to the arbitrator at the hearing before the scheduled arbitration. The arbitrator shall determine the deadlines that the parties must exchange exhibit lists and evidence to provide sufficient time for the parties to prepare, but in no case shall the deadlines for exchanging the information be less than 5 business days prior to the arbitration. Rebuttal evidence developed in response to evidence exchanged by the parties must be provided to the opposing party not less than 2 business days before the date of the scheduled arbitration. Evidence not provided in compliance with this deadline and the deadlines imposed by the arbitrator shall be inadmissible, and the arbitrator may not consider it. The arbitrator may make determinations of the admissibility of evidence and may take official notice of any fact that is judicially cognizable. Copies of original documents offered into evidence must be authenticated.

(4) The parties to an arbitration proceeding may represent themselves or may be represented by an agent as defined by this section. If an agent was not identified in the request for binding arbitration, a written authorization from the owner may be presented at the time of the arbitration proceeding in order for the agent to represent the owner at the proceeding.

(5) The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information provided to arbitrators. The information may not be disclosed except as provided by law.

(6) The arbitrator shall not communicate with the owner, the appraisal district, or their agents, nor shall the owner, the appraisal district, or their agents communicate with the arbitrator, prior to the arbitration hearing concerning specific evidence, argument, facts, merits, or the property subject to arbitration. Such communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators. This prohibition does not apply to the receipt and review of the appraisal review board hearing file by the arbitrator.

(7) The arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on the property subject to the appeal are delinquent; that the order determining a protest did not concern the appraised or market value of real property, as provided by Tax Code, §41.41(a)(1), at a value of $1 million or less; that the request for arbitration was not timely filed; or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of property for which a request for arbitration has been made.

(8) The arbitrator must complete an arbitration proceeding in a timely manner and will make every effort to complete the proceeding within 120 days from the acceptance of the appointment by the arbitrator. Failure to comply with the timely completion of arbitration proceedings may result in the removal of the arbitrator from the comptroller's registry of arbitrators.

(f) Arbitration Determinations and Awards.

(1) The arbitrator shall determine the appraised or market value of the property that is the subject of the arbitration and may only include in the award the remedy provided by Tax Code, §42.25.

(2) If the arbitrator makes a determination of the appraised value of property to be valued under Tax Code, Chapter 23, Subchapters B, C, D, E, or H, these statutory provisions and the comptroller's rules must be followed in making the appraised value determination.

(3) If the arbitrator makes a determination of the value of a residence homestead that has an appraised value that is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(A) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23, was incorrectly applied and the change correctly applies the formula;

(B) the calculation of the appraised value of the property reflected in the appraisal review board order includes an amount attributable to new improvements and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(C) the arbitrator determines that the market value of the property is less than the appraised value indicated on the appraisal review board order and the change reduces the appraised value to the market value determined by the arbitrator.

(4) Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall make a final determination and award on the form prescribed by this section and signed by the arbitrator. A copy of the determination and award form shall be delivered to the owner or agent and the appraisal district by facsimile transmission or regular first-class mail, as requested by the parties, and to the comptroller by regular first-class mail.

(5) All post-appeal administrative procedures provided by Tax Code, Chapter 42, Subchapter C, shall apply to arbitration awards.

(g) Payment of Arbitrators' Fees and Refund of Property Owner Deposit.

(1) Deposits submitted with requests for arbitration by owners or agents, and submitted by appraisal districts to the comptroller, shall be deposited into individual accounts for each owner and according to assigned arbitration numbers.

(2) The provisions of Government Code, Chapter 2251, shall apply to the payment of arbitrator fees by the comptroller, if applicable, beginning on the date that the comptroller receives a copy of the arbitrator's determination and award by regular first-class mail.

(3) If the arbitrator's award is nearer to the owner's opinion of the appraised or market value of the property as stated on the owner's request for arbitration, the comptroller must refund as soon as practicable the deposit in the owner's account, less the 10% retained by the comptroller for administrative costs, to the owner or agent at the address shown on the request for arbitration. The appraisal district shall be responsible for payment of the arbitrator's fee, and any claim for payment by the arbitrator shall be made against the appraisal district.

(4) If the award is not nearer to the owner's opinion as stated in the owner's request for arbitration, the comptroller shall pay the fee charged by the arbitrator to the address shown on the arbitrator's registry application. The fee will be paid from the deposit in the owner's account. If the arbitrator fee is less than $450, the comptroller shall refund to the owner or agent any remaining deposit. The comptroller shall retain 10% of the deposit for administrative costs in either event. An award that determines an appraised or market value at an amount exactly one-half of the difference in value is deemed to be nearer the appraisal district's opinion of value.

(5) If an arbitrator dismisses a pending arbitration as provided by subsection (e)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. In such event, the arbitrator must seek payment from the owner or agent for the services rendered prior to the dismissal of the proceeding.

(6) If the owner or agent withdraws a request for arbitration in writing 14 or more calendar days before the arbitration proceeding is first scheduled, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. If the owner or agent withdraws a request for arbitration less than 14 calendar days before the arbitration proceeding is first scheduled, the comptroller shall make payments as provided by paragraph (4) of this subsection.

(7) If the comptroller denies a request for arbitration as provided by subsection (b)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs.

(8) A refund to an owner or agent or a payment to an arbitrator is subject to the provisions of Government Code, §403.055. The comptroller shall not issue a warrant for payment to a person who is indebted to the state or has a tax delinquency owing to the state until the indebtedness or delinquency has been fully satisfied.

(h) The model forms in paragraphs (1), and (2) of this subsection are adopted by reference by the Comptroller of Public Accounts. Copies of these forms are available for inspection at the office of the Texas Register or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling the toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

(1) Request for Binding Arbitration, and

(2) Arbitration Determination and Award.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2005.

TRD-200505590
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: December 25, 2005
Proposal publication date: September 16, 2005
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

The Texas Youth Commission (the commission) adopts amendments to §85.5 and §85.51, without changes to the proposed text as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 7014).

The commission adopts the repeal of §§85.55, 85.59, 85.61, 85.65, 85.69, and 85.95, concerning program completion, parole placement and discharge, without changes to the proposal as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 7026).

The commission simultaneously adopts new §§85.55, 85.59, 85.61, 85.65, 85.69, and 85.95. Section 85.69 is adopted with minor grammatical changes to the proposed text as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg

7015). Sections 85.55, 85.59, 85.61, 85.65, and 85.95 are adopted without changes and will not be republished.

The justification for the amendments, repeals, and new rules is to better organize information relating to the progress, movement, and release of youth within TYC's programs.

Section 85.5 limits automatic psychiatric referrals of youth at Marlin Orientation and Assessment Unit to those who are admitted while currently prescribed psychotropic medication or have been prescribed such medication within the past six months, rather than the past year.

Section 85.51, concerning Definitions clarifies certain definitions that pertain to rules in Subchapter D of this chapter.

Sections 85.55, 85.59, and 85.61 allow the 120-day deadline for release following the exit interview to be extended by 30 days when a youth is placed on remediation in specific phase objectives or demoted to the next lower phase after the exit interview. Such extension allows the youth to regain eligibility for release to a community placement or transfer to adult parole. If the youth does not regain eligibility for release or transfer, the youth will lose release or transfer eligibility until such time as the youth meets program completion criteria.

Additionally, §85.59 and §85.61 provide that the commission may consider transferring (without court approval) a sentenced offender youth whose offense was committed on or after September 1, 2005, and whose sentence expires before the minimum period of confinement, to Texas Department of Criminal Justice (TDCJ) when the youth completes all but nine months of his/her sentence and meets required transfer criteria.

Section 85.65 establishes rules and an approval process for discharging sentenced offenders whose offense was other than capital murder, who have met transfer criteria to TDCJ, or whose sentence has expired.

Section 85.69 gives staff and volunteers the opportunity to speak on the behalf of youth who are being considered for transfer to TDCJ-Institution Division (TDCJ-ID) at the Special Services Committee (SSC) meeting. In order to transfer custody to the Parole or Institutions Division of the Texas Department of Criminal Justice, §85.69 will require that youth who were sentenced for capital murder committed before September 1, 2003, and who have not completed their minimum period of confinement, must return to court for a transfer hearing no later than when the youth reaches 20 years and six months of age.

Section 85.95 allows several new offender classifications, namely Chronic Serious Offender, Controlled Substances Dealer and Firearms Offender, to be eligible for discharge when the youth completes the initial six months on parole status and meets parole discharge criteria. Finally, §85.95 allows Chronic Serious Offenders, Controlled Substances Dealers, Firearms Offenders and Type B Violent Offenders to be discharged after completion of 30 days on parole status after the youth reaches 20 years and six months of age, receives two face-to-face contacts within the same 30 days, and has no pending criminal charges.

No comments were received regarding adoption of the amendments, repeals, or new rules.

SUBCHAPTER A. COMMITMENT AND RECEPTION

37 TAC §85.5

The amendment is adopted under the Human Resources Code, §61.071, which provides the commission with the authority to establish rules to determine psychiatric services and §61.076 which provides the commission with the authority to provide psychiatric treatment that is necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505514
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 16, 2006
Proposal publication date: October 28, 2005
For further information, please call: (512) 424-6014

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SUBCHAPTER D. PROGRAM COMPLETION

37 TAC §§85.51, 85.55, 85.59, 85.61, 85.65, 85.69

The amendment and new rules are adopted under the Human Resources Code, §61.075, which provides TYC with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; §61.081, which provides TYC the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by TYC; §61.084, which provides TYC the authority to transfer youth sentenced under a determinate sentence to the institutional division or parole division of the Texas Department of Criminal Justice. The commission shall from its custody discharge a youth who sentence has not expired no later than the youth's 21st birthday; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

§85.69. Program Completion for Sentenced Offenders Adjudicated for Capital Murder.

(a) Purpose. The purpose of this rule is to establish criteria and an approval process for transferring, upon program completion, sentenced offenders adjudicated for capital murder to the Texas Department of Criminal Justice - Parole Division (TDCJ-PD) or the Texas Department of Criminal Justice - Institutions Division (TDCJ-ID).

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not apply to:

(A) disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices);

(B) sentenced offender youth adjudicated for any offense other than capital murder. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19) and §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older).

(c) General Restrictions. Refer to §85.59 of this title for the list of general restrictions.

(d) General Requirements.

(1) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(2) The Special Services Committee (SSC) shall evaluate the youth six (6) months after admission to TYC, when the minimum period of confinement (MPC) is complete, on or about the youth's 20th birthday to determine eligibility for transfer to TDCJ-ID or TDCJ-PD, and at other times as requested by the committee.

(A) The SSC agenda, identifying sentenced offender youth that are being considered for transfer to TDCJ-ID, should be distributed among TYC staff within a reasonable time prior to the scheduled SSC meeting.

(B) All TYC staff and volunteers should be given the opportunity to attend the SSC meeting and speak on the behalf of a youth, if they are inclined to do so, and a brief summary of their testimony should be included in the SSC minutes.

(C) All TYC staff and volunteers must be informed (given written notice) that they may submit a written statement to be considered by the SSC and the local chief administrator (CLA).

(3) A plan to minimize risk factors for re-offending shall be developed for each youth prior to transferring to TDCJ-PD.

(4) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(5) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(6) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(7) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(8) Minimum Period of Confinement (MPC). The MPC is ten (10) years for youth sentenced for capital murder or completion of the sentence, whichever occurs first.

(9) Placement. Sentenced offenders shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless the youth is:

(A) transferred to TDCJ-ID in accordance with legal requirements or committing court approval. See §85.65 of this title (relating to Discharge of Sentenced Offenders Upon Transfer to TDCJ or Completion of Sentence); or

(B) approved by the committing court to attain parole status prior to completion of serving the MPC for youth whose offense committed before September 1, 2003; or

(C) approved by the executive director to attain parole status prior to completion of MPC for youth whose offense committed on or after September 1, 2003.

(10) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when the youth is transferred to TDCJ (prior to age 21) or his/her sentence is complete (except as specified in subsection (d)(11) of this section).

(11) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:

(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, and the youth is discharged from the indeterminate commitment order upon completion of the indeterminate offense.

(C) The determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently.

(e) Release/Transfer Criteria. A sentenced offender youth adjudicated for capital murder in a high restriction (prior to the completion of the MPC) will be transferred to TDCJ-PD/TDCJ-ID or may be released to TYC parole.

(1) Youth Whose Offense was Committed Before September 1, 2003.

(A) TYC will request a hearing by the committing juvenile court with a recommendation to transfer to TDCJ-PD, if a youth (before age 20.6) meets the following criteria:

(i) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(ii) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsection (f) of this section; and

(iii) completion of three (3) years toward the MPC; and

(iv) the youth is currently assessed at Resocialization phase A4, B4, C4 with no main objectives or sub-objectives indicators under remediation.

(B) If the youth does not meet the criteria in subsection (e)(1)(A)(i) - (iv), TYC will request a hearing by the committing juvenile court with a transfer recommendation to either TDCJ-PD or TDCJ-ID when the youth reaches the age of 20.6.

(C) A youth who has not received court approval to transfer to TDCJ-PD will be transferred to TDCJ-ID no later than the youth's 21st birthday.

(2) Youth Whose Offense was Committed On or After September 1, 2003.

(A) Release to TYC Parole (Before Age 19). A youth who was sentenced for capital murder where the offense was committed on or after September 1, 2003 may be released to TYC parole without court approval if the youth meets criteria listed in subsection (e)(1)(A)(i) - (iv) and, for youth committed after April 1, 2005, successful completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for

rehabilitation services and the assistant deputy executive director for juvenile corrections).

(B) Transfer to TDCJ-PD (After Age 19).

(i) A youth who was sentenced for capital murder where the offense was committed on or after September 1, 2003 may be transferred to TDCJ-PD without court approval if the youth meets criteria listed in subsection (e)(1)(A)(i) - (iv) and, for youth committed after April 1, 2005, successful completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(ii) A youth who was sentenced for capital murder where the offense was committed on or after September 1, 2003 who does not meet transfer criteria listed in subsection (e)(1)(A)(i) - (iv) including completion of specialized treatment will remain in high restriction until age 21. No later than the youth's 21st birthday, he/she will be transferred to TDCJ-PD without court approval.

(3) For Transferring to TDCJ-ID (Before Age 21). TYC may request a court hearing regardless of when the youth's offense was committed and no later than the youth's 21st birthday if the following criteria have been met:

(A) youth is at least age 16; and

(B) youth has spent at least six (6) months in a high restriction facility; and

(C) youth has not completed his/her sentence; and

(D) youth has met at least one of the following behavior criteria:

(i) youth has committed a felony or Class A misdemeanor while assigned to residential placement; or

(ii) youth has committed Category I rule violations (on three or more occasions); or

(iii) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(iv) youth has demonstrated an inability to progress in his/her Resocialization program due to persistent non compliance with treatment objectives; and

(E) alternative interventions have been tried without success. (For example: special treatment plans, disciplinary transfer, extended stay); and

(F) youth's conduct indicates that the welfare of the community requires the transfer.

(f) Decision Authority.

(1) The executive director (final TYC decision authority) must:

(A) determine if youth, before age 21, whose offense was before September 1, 2003 meets criteria under this rule for release to TYC parole or transfer to TDCJ-PD; or

(B) determine if youth, before age 21, meets criteria under this rule for transfer to TDCJ-ID; and

(C) approve the request for a hearing by the committing juvenile court to release youth to TYC parole or transfer to TDCJ-PD/TDCJ-ID.

(2) The committing juvenile court is the final decision authority for releasing to TYC parole or transferring to TDCJ-PD for youth whose offense was before September 1, 2003.

(3) If the youth's offense was committed before September 1, 2003, the youth will be transferred to TDCJ-ID upon receipt of the committing juvenile court order no later than the youth's 21st birthday. Court approval is required.

(4) The final TYC decision authority does not have to request a hearing for youth whose offense was on or after September 1, 2003 to be released to TYC parole or transferred to TDCJ-PD.

(g) Transfer Process.

(1) Transferring to TDCJ-PD.

(A) TYC will submit the required documentation requesting a transfer of the offender to TDCJ-PD along with an adjudication form and a case summary, which includes recommendations for parole conditions.

(B) TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for parole or transfer within 90 days of receiving TYC's transfer notification.

(C) On receipt of the conditions, the TYC/TDCJ liaison will contact TDCJ-PD to confirm the transfer date, notify the sending facility of the parole conditions and the transfer date, coordinate the transfer process and make final arrangements for the discharge.

(D) TDCJ personnel will serve their Order of Transfer in person on the scheduled day, at which time the sentenced offender youth is transferred to the TDCJ-PD and discharged from the TYC.

(2) Transferring to TDCJ-ID.

(A) Following the committing court's decision to transfer a sentenced offender to TDCJ-ID, the youth is returned to the assigned program location and then transported to TDCJ-ID.

(B) The youth will be transported to the diagnostic unit at TDCJ in Huntsville, Texas. The TYC court liaison in Central Office will provide the address or location to the diagnostic unit, if needed.

(C) Upon transfer to TDCJ-ID, the youth may only bring the following personal property items to TDCJ-ID:

(i) Bible/Other Religion Text--some offenders write addresses and telephone numbers in it since they cannot take separate paper into TDCJ-ID;

(ii) Trust fund--offender must use TDCJ personal property envelopes. Use the TDCJ Inmate Trust Fund form, ITF-16 (available through TDCJ) when sending offender's trust fund after the offender has already been transported to TDCJ-ID. The guards at the Diagnostic Unit can provide the Inmate Trust Fund form, ITF-16, if needed.

(h) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the discharge.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505515
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 16, 2006
Proposal publication date: October 28, 2005
For further information, please call: (512) 424-6014

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37 TAC §§85.55, 85.59, 85.61, 85.65, 85.69

The repeals are adopted under the Human Resources Code, §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505516
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 16, 2006
Proposal publication date: October 28, 2005
For further information, please call: (512) 424-6014

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SUBCHAPTER E. PAROLE PLACEMENT AND DISCHARGE

37 TAC §85.95

The repeal is adopted under the Human Resources Code, §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505517
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 16, 2006
Proposal publication date: October 28, 2005
For further information, please call: (512) 424-6014

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37 TAC §85.95

The new rule is adopted under the Human Resources Code, §61.081, which provides the commission with the authority to resume the care and custody of any youth released under supervision at any time before discharging the youth; and §61.075, which provides the commission with the authority to discharge a youth to best serve the youth's welfare and the protection of the public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505518
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 16, 2006
Proposal publication date: October 28, 2005
For further information, please call: (512) 424-6014

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CHAPTER 87. TREATMENT

SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.1

The Texas Youth Commission (the commission) adopts an amendment to §87.1, concerning Case Planning, without changes to the proposed text as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 7028).

The justification for amending the section is the availability of accurate and current agency rules. The amended section deleted a definition that is not used within this section and updated the reference to §87.2 of this title, relating to Resocialization Program to reflect the new rule number.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505512
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 16, 2006
Proposal publication date: October 28, 2005
For further information, please call: (512) 424-6014

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CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER A. BASIC SERVICES

37 TAC §91.7

The Texas Youth Commission (the commission) adopts an amendment to §91.7, concerning Youth Personal Property, without changes to the proposed text as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 7028).

The justification for amending the section is the availability of accurate and current agency rules. The amendment adds procedures for disposal of contraband money and clarifies that care, custody or control of prohibited items is considered possession for purposes of rules concerning contraband.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the commission with the authority to limit and restrict personal property of youth while in a residential placement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on November 29, 2005.

TRD-200505513
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 16, 2006
Proposal publication date: October 28, 2005
For further information, please call: (512) 424-6014

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Revised Agency Rule Review Plan

Texas Education Agency

Title 19, Part 2

TRD-200505596
Filed: December 5, 2005

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Proposed Rule Review

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) and the Texas Education Agency (TEA) propose the review of 19 TAC Chapter 105, Foundation School Program, pursuant to the Texas Government Code, §2001.039. The rules being reviewed in 19 TAC Chapter 105 are organized under the following subchapters: Subchapter A, Definitions; Subchapter B, Use of State Funds; Subchapter AA, Commissioner's Rules Concerning Optional Extended Year Program; Subchapter BB, Commissioner's Rules Concerning State Aid Entitlements; and Subchapter CC, Commissioner's Rules Concerning Severance Payments.

As required by the Texas Government Code, §2001.039, the SBOE and the TEA will accept comments as to whether the reason for adopting 19 TAC Chapter 105 continues to exist. The comment period will last for 30 days beginning with the publication of this notice.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200505595
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: December 5, 2005

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Adopted Rule Reviews

General Land Office

Title 31, Part 1

The Texas General Land Office (GLO) files this Notice of Readoption of 31 TAC Chapter 3, relating to General Provisions, §§3.1, 3.21 - 3.24, 3.30 - 3.31, and 3.50. The readoption of Chapter 3 is filed in accordance with the GLO's Intention to Review published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4845).

As a result of this Rule Review, the GLO readopts the contents of the following sections, except as noted. No comments were received on the proposed notice of intention to review.

Chapter 3 is readopted under the Natural Resources Code, §31.051, which authorizes the commissioner to adopt rules consistent with law.

§3.1. Restrictions on Assignment of Vehicles.

§3.21. Training and Education.

§3.22. Employee Obligation.

Note: The contents of §3.22 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of the November 18, 2005, issue of the *Texas Register* (30 TexReg 7744).

§3.23. Training and Education Materials.

§3.24. No Effect on At-Will Employment Status.

Note: The contents of §3.24 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of the November 18, 2005, issue of the *Texas Register* (30 TexReg 7744).

§3.30. Historically Underutilized Businesses Program.

§3.31. Fees.

Note: The contents of §3.31 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of the November 18, 2005, issue of the *Texas Register* (30 TexReg 7744).

§3.50. Purchasing.

This concludes the GLO's review of 31 TAC Chapter 3, General Provisions.

TRD-200505500
Trace Finley
Policy Director
General Land Office
Filed: November 29, 2005

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The Texas General Land Office (GLO) files this Notice of Readoption of 31 TAC Chapter 8, relating to Gas Marketing Program, §§8.1 - 8.10. The readoption of Chapter 8 is filed in accordance with the GLO's Intention to Review published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4845).

As a result of this Rule Review, the GLO readopts the contents of the following sections, except as noted. No comments were received on the proposed notice of intention to review.

Chapter 8 is readopted under the Natural Resources Code, §31.051, which authorizes the commissioner to adopt rules consistent with law.

§8.1. Scope of Rules.

Note: The contents of §8.1 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§8.2. Definitions.

Note: The contents of §8.2 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§8.3. Contract Submission Requirements.

Note: The contents of §8.3 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§8.4. Review Criteria For All Contracts.

Note: The contents of §8.4 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§8.5. Unapproved Contracts; Requests for Waiver.

§8.6. Review of Existing Contracts.

§8.7. Waivers for Contracts for the Acquisition of Non-State Gas.

§8.8. Gas Usage Data Form.

Note: The contents of §8.8 were amended as a result of the review. The Notice of Adoption appears in the Adopted Rules section of this issue of the *Texas Register*.

§8.9. Requests For Proposals.

§8.10. Reporting Contract Savings.

This concludes the GLO's review of 31 TAC Chapter 8, Gas Marketing Program.

TRD-200505503
Trace Finley
Policy Director
General Land Office
Filed: November 29, 2005

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §82.53(b)

Tier	Criteria	Inspection Frequency
(1) Tier 1	(A) Barber schools, due to the type and nature of the tasks performed and processes to be monitored, and the level of experience of those performing the services. (B) Barbershops and manicurist specialty shops having: (i) a significant violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or (ii) significant or repeated violation(s) relating to unlicensed practice.	Once each year
(2) Tier 2	Barber establishments having: (A) serious or repeated violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or (B) serious or repeated violation(s) relating to unlicensed practice.	Twice each year
(3) Tier 3	Barber establishments having: (A) repeated, serious violations of sanitation rules determined by the department to pose a threat for the spread of infectious or contagious disease; or (B) repeated, serious violations related to unlicensed practice.	Four times each year

Figure: 16 TAC §83.53(b)

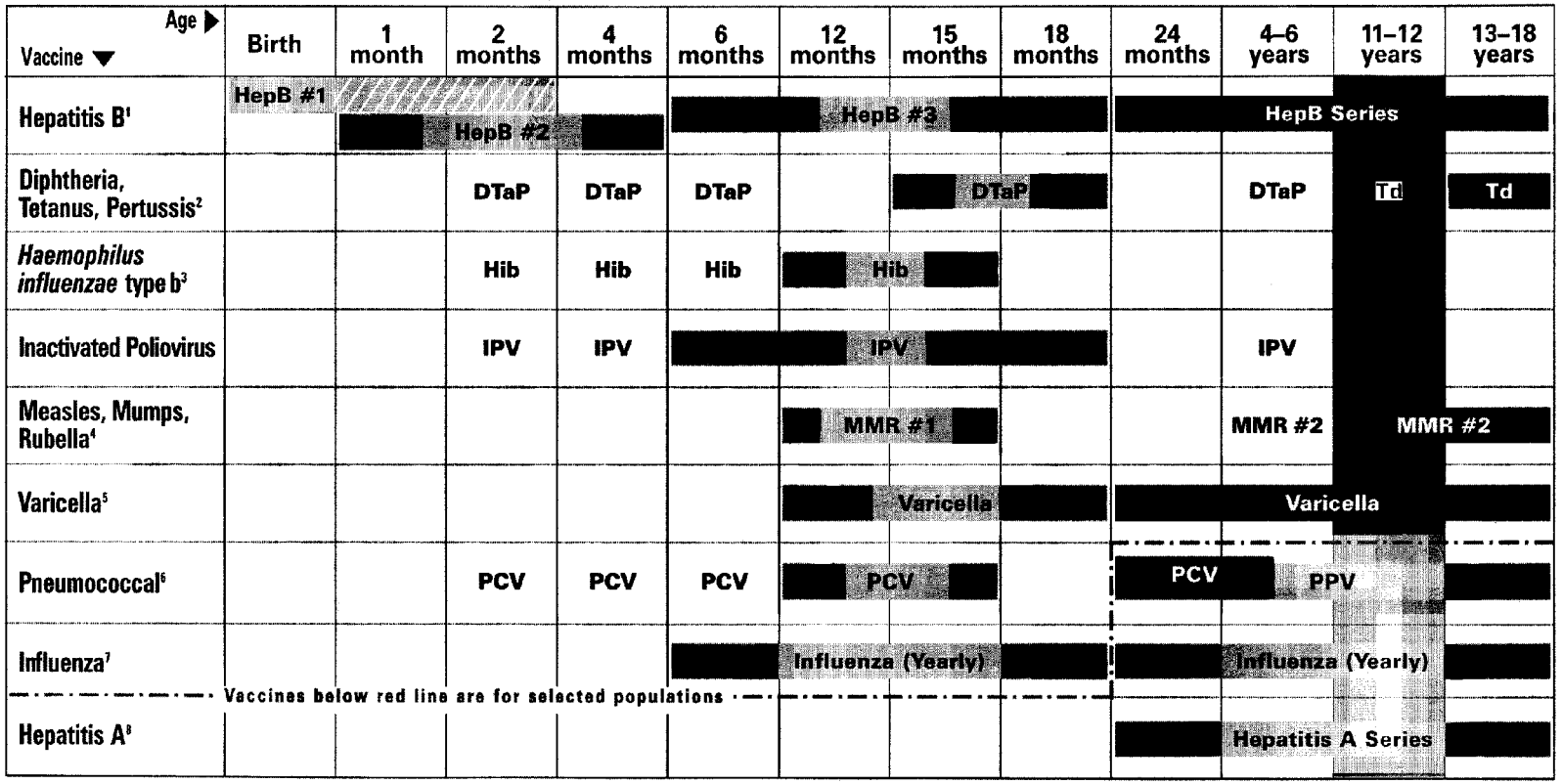
Tier	Criteria	Inspection Frequency
(1) Tier 1	(A) Beauty culture schools, public or private, due to the type and nature of the tasks performed and processes to be monitored, and the level of experience of those performing the services. (B) Beauty salons and specialty salons having: (i) a significant violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or (ii) significant or repeated violation(s) relating to unlicensed practice.	Once each year
(2) Tier 2	Cosmetology establishments having: (A) serious or repeated violation(s) of sanitation rules, particularly those determined by the department to pose a threat for the spread of infectious or contagious disease; or (B) serious or repeated violation(s) relating to unlicensed practice.	Twice each year
(3) Tier 3	Cosmetology establishments having: (A) repeated, serious violations of sanitation rules determined by the department to pose a threat for the spread of infectious or contagious disease; or (B) repeated, serious violations related to unlicensed practice.	Four times each year

Figure: 25 TAC §97.221

TEXAS Department of State Health Services

Department of State Health Services Immunization Schedule

January 1, 2006



This schedule indicates the recommended ages for routine administration of currently licensed childhood vaccines for children through age 18 years. Any dose not given at the recommended age should be given at any subsequent visit when indicated and feasible. ■ Indicates age groups that warrant special effort to administer those vaccines not previously given.

Department of State Health Services Immunization Schedule

1. **Hepatitis B (HepB) vaccine.** All infants should receive the first dose of HepB vaccine soon after birth and before hospital discharge; the first dose may also be administered by age 2 months if the mother is hepatitis B surface antigen (HBsAg) negative. Only monovalent HepB can be used for the birth dose. Monovalent or combination vaccine containing HepB may be used to complete the series. Four doses of vaccine may be administered when a birth dose is given. The second dose should be given at least 4 weeks after the first dose, except for combination vaccines which cannot be administered before age 6 weeks. The third dose should be given at least 16 weeks after the first dose and at least 8 weeks after the second dose. The last dose in the vaccination series (third or fourth dose) should not be administered before age 24 weeks.

   Infants born to HBsAg-positive mothers should receive HepB and 0.5 mL of hepatitis B immune globulin (HBIG) at separate sites within 12 hours of birth at separate sites. The second dose is recommended at age 1 to 2 months. The last dose in the immunization series should not be administered before age 24 weeks. These infants should be tested for HBsAg and antibody to HBsAg (anti-HBs) at age 9 to 15 months.

   Infants born to mothers whose HBsAg status is unknown should receive the first dose of the HepB series within 12 hours of birth. Maternal blood should be drawn as soon as possible to determine the mother's HBsAg status; if the HBsAg test is positive, the infant should receive HBIG as soon as possible (no later than age 1 week). The second dose is recommended at age 1 to 2 months. The last dose in the immunization series should not be administered before age 24 weeks.

2. **Diphtheria and tetanus toxoids and acellular pertussis (DTaP) vaccine.** The fourth dose of DTaP may be administered as early as age 12 months, provided 6 months have elapsed since the third dose and the child is unlikely to return at age 15 to 18 months. The final dose in the series should be given at age ≥4 years. **Tetanus and diphtheria toxoids (Td)** is recommended at age 11 to 12 years if at least 5 years have elapsed since the last dose of tetanus and diphtheria toxoid-containing vaccine. Subsequent routine Td boosters are recommended every 10 years.

3. ***Haemophilus influenzae* type b (Hib) conjugate vaccine.** Three Hib conjugate vaccines are licensed for infant use. If PRP-OMP (PedvaxHIB® or ComVax® [Merck]) is administered at ages 2 and 4 months, a dose at age 6 months is not required. DTaP/Hib combination products should not be used for primary immunization in infants at ages 2, 4, or 6 months but can be used as boosters after any Hib vaccine. The final dose in the series should be administered at age ≥12 months.

4. **Measles, mumps, and rubella vaccine (MMR).** The second dose of MMR is recommended routinely at age 4 to 6 years but may be administered during any visit, provided at least 4 weeks have elapsed since the first dose and both doses are administered beginning at or after age 12 months. Those who have not previously received the second dose should complete the schedule by age 11-12 years.

5. **Varicella vaccine.** Varicella vaccine is recommended at any visit at or after age 12 months for susceptible children (i.e., those who lack a reliable history of chickenpox). Susceptible persons aged ≥13 years should receive 2 doses given at least 4 weeks apart.

6. **Pneumococcal vaccine.** The heptavalent **pneumococcal conjugate vaccine (PCV)** is recommended for all children aged 2 to 23 months. It is also recommended certain children aged 24 to 59 months. The final dose in the series should be given at age ≥12 months. **Pneumococcal polysaccharide vaccine (PPV)** is recommended in addition to PCV for certain high-risk groups including children with sickle disease, asplenia, HIV infection, or other immunocompromising conditions or chronic diseases. **(Not required for school entry)**

7. **Influenza vaccine.** Influenza vaccine is recommended annually for children aged ≥6 months with certain risk factors (including but not limited to, asthma, cardiac disease, sickle cell disease, human immunodeficiency virus infection, and diabetes), healthcare workers, and other persons (including household members) in close contact with persons at high risk (see *MMWR* 2004;53[RR-6]:1-40). In addition, healthy children aged 6 to 23 months and close contacts of healthy children aged 0-23 months are recommended to receive influenza vaccine because children in this age group are at substantially increased risk for influenza-related hospitalizations. For healthy persons aged 5-49 years, the intranasally administered, live, attenuated influenza vaccine (LAIV) is an acceptable alternative to the intramuscular trivalent inactivated influenza vaccine (TIV). See *MMWR* 2004;53(RR-6):1-40). Children receiving TIV should be administered a dosage appropriate for their age (0.25 mL if aged 6-35 months or 0.5 mL if aged ≥3 years). Children aged ≤8 years who are receiving influenza vaccine for the first time should receive 2 doses (separated by at least 4 weeks for TIV and at least 6 weeks for LAIV). **(Not required for school/child-care entry)**

8. **Hepatitis A vaccine.** Hepatitis A vaccine is recommended for children and adolescents in Texas. Children and adolescents who have not been immunized against hepatitis A can begin the hepatitis A immunization series during any visit. The 2 doses in the series should be administered at least 6 months apart.

Informed by recommendations of the 2005 Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP), and adopted by the Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. (800) 252-9152. The above information is available at www.ImmunizeTexas.com.

Figure: 30 TAC §114.315(c)(5)(C)

$$\bar{X}_C < \bar{X}_R + \delta - S_p \cdot \sqrt{2/n} \cdot t\,(a, 2n-2)$$

Where:

$\bar{X}_C$ = Average emissions during testing with the candidate fuel.

$\bar{X}_R$ = Average emissions during testing with the reference fuel.

δ = Tolerance level equal to 1% of $\bar{X}_R$ for oxides of nitrogen (NO_x), and 2% of $\bar{X}_R$ for particulate matter (PM).

S_p = Pooled standard deviation.

$t\,(a, 2n-2)$ = The one-sided upper percentage point of t distribution with a = 0.15 and 2n-2 degrees of freedom.

n = Number of tests of candidate and reference fuel.

Figure: 30 TAC §114.318(b)(2)(C)(i)

Sulfur parts per million (ppm)	25% - 49% Below Federal Baseline		50% - 74% Below Federal Baseline		75% Below or Just Above Federal Limits		Federal Model Limits or Lower	
	Avg.	Cap	Avg.	Cap	Avg.	Cap	Avg.	Cap
	131-194	501-750	66-130	251-500	31-65	81-250	30 or Lower	80 or Lower
Percent Reduction from MOBILE 6.2	2.75%		5.71%		9.22%		11.88%	
2003 Gasoline to Diesel Offset Ratios	4.12		1.99		1.23		0.96	

Figure: 30 TAC §114.318(b)(2)(C)(ii)

Sulfur parts per million (ppm)	50% Below or Just Above Federal Limits		Federal Model Limits or Lower	
	Avg.	Cap	Avg.	Cap
	31-65	80 or lower	30 or lower	80 or lower
Percent Reduction from MOBILE 6.2	4.26%		7.21%	
2004 Gasoline to Diesel Offset Ratios	2.84		1.68	

Figure: 30 TAC §114.318(b)(2)(C)(iii)

Sulfur parts per million (ppm)	Federal Model Limits or Lower	
	Avg.	Cap
	30 or Lower	80 or Lower
Percent Reduction from MOBILE 6.2	6.24%	
2005 Gasoline to Diesel Offset Ratio	2.07	

Figure: 30 TAC §114.318(b)(3)(A)

$$(450.56*(5.78\%-UM))/(GNEI*M6)=\text{Offset Ratio}$$

Where:

UM = Percentage of oxides of nitrogen (NO_x) emission reductions attributed to on-road diesel for 2007 as calculated with the Unified Model.

GNEI = Total NO_x emissions inventory in tons per day attributed to gasoline engines for the counties listed in §114.319(b)(4) of this title as follows: 229.51 tons per day for 2003, 215.37 tons per day for 2004, and 201.24 tons per day for 2005.

M6 = The appropriate percent reduction from MOBILE 6.2 as specified in the applicable table in paragraph (2)(C) of this subsection.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Request for Proposal

This Request for Proposal is filed pursuant to Texas Government Code §2254.021 et seq.

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare Indirect Cost Plans for State Fiscal Years 2005 ("FY05") (based on actual expenditures) and 2007 ("FY07") (based on budgeted expenditures) and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code §2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in FY07.

The consultant selected to prepare the Indirect Cost Plans and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty-Nine Thousand and NO/100 Dollars($49,000.00).

SCOPE OF SERVICES

The successful consultant will be required to render the following services and reports:

1. Prepare two (2) Indirect Cost Plans in accordance with OMB Circular A-87 - one based on FY05 actual expenditures and one based on FY07 budgeted expenditures.

* Identify the sources of financial information;

* Inventory all federal and other programs administered by the OAG;

* Classify all OAG divisions;

* Determine administrative divisions;

* Determine allocation bases for allotting services to benefitting divisions;

* Develop allocation data for each allocation base;

* Prepare allocation worksheets based upon actual FY05 expenditures and budgeted FY07 expenditures;

* Summarize costs by benefitting division;

* Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;

* Determine indirect cost rates throughout the OAG on an annual basis;

* Prepare and present draft Indirect Cost Plans to the OAG by April 10, 2006;

* Formalize the Actual FY05 and Budgeted FY07 Indirect Cost Plans and present them to HHS by April 28, 2006; and

* Negotiate the Indirect Cost Plans' approval with HHS by August 31, 2006.

2. Develop standardized billing rates for legal services.

* Review current criteria used by the OAG for charging various agencies;

* Determine the types of legal services provided to the agencies;

* Compile direct hours for each type of service;

* Determine effort reporting requirements;

* Re-examine billing rate options;

* Determine the actual cost of services;

* Analyze and confirm revenues and cost analyses;

* Prepare and present a draft Legal Services Billing Schedule for FY 2005 actual costs and FY 2007 budgeted costs to the OAG by July 17, 2006;

* Formalize a Legal Services Billing Schedule by August 31, 2006.

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

QUALIFICATIONS

Each individual, company, or organization submitting a proposal pursuant to this request, must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the experience to prepare and successfully negotiate the type of Indirect Cost Plan described above;

2. Has a thorough understanding of cost allocation issues and preparation of Indirect Cost Plans at the state agency level;

3. Has a thorough understanding of legal services billing procedures and preparation of a Legal Services Billing Schedule; and

4. Can program and execute the Indirect Cost Plans and Legal Services Billing Schedule within the required time frames specified in the "SCOPE OF SERVICES" section.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill the requirements described in the "SCOPE OF SERVICES" section;

2. Detailed information on the consultant staff to be assigned to the project; and

3. The proposed fee amount for provision of the desired services.

A signed original and five (5) copies of the proposal must be received in the OAG Purchasing Section, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than 3:00 p.m., Central Standard Time, January 23, 2006. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government \ Code §2254.028, the OAG anticipates entering into the resultant contract on or about February 6, 2006.

A proposal must include all of the references and financial status information as specified below at the time of opening or it will be disqualified. Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG".

REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;

2. The services must have been provided by the prospective consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Proposal;

3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.

5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.

6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

7. As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant, and by submission of a proposal, the prospective consultant agrees to provide same.

DISCLOSURE

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the OAG or any other state agency(ies) at any time during the two (2) years preceding the tendering of the proposal will disclose in the proposal:

1. the nature of the previous employment with the OAG or any other state agency(ies);

2. the date(s) the employment(s) terminated; and

3. the annual rate(s) of compensation for the employment(s) at the time(s) of termination.

Each consultant that submits a proposal must certify to the following:

1. consultant has no unresolved audit exceptions(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.

2. consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract, and will not participate in the selection of consultant(s) awarded contracts.

3. consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.

4. consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties, and allowing inspection of consultant's records.

5. consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.

6. consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for noncompliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.

7. consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

8. consultant has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

9. Neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or in-

directly its response to any competitor or any other person engaged in such line or business.

10. Under §231.006 Family Code (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

11. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

12. consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in Rule 1 TAC 111.2.

13. consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.

14. consultant must answer the following questions:

* If an award is issued, do you plan to utilize a subcontractor or supplier for any portion of the contract? If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

* If yes, what percentage of the total award would be subcontracted or supplied by Historically Underutilized Businesses (HUBs)?

* If no, explain why no subcontracting opportunities are available or what efforts were made to subcontract part of this project.

* Is consultant certified as a Texas HUB?

PAYMENT

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

PROPOSAL PREPARATION AND CONTRACTING EXPENSES

All proposals must be typed, double spaced, on 8 1/2 x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Julie Geeslin (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Proposal." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the proposal from further consideration at the OAG's discretion.

2. Executive Summary: A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.

3. Project Proposal

4. Cost Proposal

5. Relevant Technical Skill Statement (with references and vitae)

6. Relevant Experience Statement (with references and vitae)

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Julie Geeslin (address at the end of this Request for Proposal). After the deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about February 10, 2006 or within ten (10) days of making an award, whichever is later.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will be presumed to be public unless a specific exception in that Act applies. Prospective consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, proposals must specify the specific information which the prospective consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request

for Proposal and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offeror of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any expenses incurred by the prospective consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to:

Ms. Julie Geeslin

Budget and Purchasing Division

Office of the Attorney General of Texas

300 W. 15th Street, Third Floor

Austin, Texas 78701

(Phone: 512-475-4495)

TRD-200505630
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: December 7, 2005

♦ ♦ ♦

Texas Health and Safety Code and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action under the Health and Safety Code and the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Codes.

Case Title and Court: *State of Texas and the Texas Commission on Environmental Quality v. Raymond C. Dragoo, Individually and d/b/a Cedar Hills Subdivision, Cedar Hills Water Association, and Oak Ridge Subdivision, and W. E. Reed, Individually and d/b/a Cedar Hills Subdivision, Cedar Hills Water Association, and Oak Ridge Subdivision,* Cause No. GV301260; in the 250th Judicial District Court, Travis County, Texas.

Nature of Defendants' Operations: Defendant Raymond C. Dragoo, operated a public water system and on-site sewage disposal facilities in Hamilton County, Texas. The TCEQ investigated the water system and the on-site sewage disposal facilities and found that Defendant was in violation of several rules concerning the safe operation and monitoring of the water system. The investigations also showed that Defendant failed to construct at least 10 on-site sewage disposal facilities in accordance with state laws and rules. The Defendant has hired a professional engineering and management firm to oversee the operation and maintenance of the water system and the on-site sewage disposal facilities. All violations have been corrected at both the water system and the on-site sewage disposal facilities. The Defendant has agreed to this judgment.

Proposed Agreed Judgment: The Agreed Final Judgment assesses civil penalties against the Defendant. Defendant has agreed to pay Plaintiff a civil penalty in the amount of $25,000.00, as well as $17,000.00 in attorney's fees, plus all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Lisa Sanders Richardson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200505622
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: December 7, 2005

♦ ♦ ♦

Central Texas Regional Mobility Authority

Notice of Availability of Request for Qualifications for Development of US 290 East Toll Project Through a Comprehensive Development Agreement

The Central Texas Regional Mobility Authority ("CTRMA"), a political subdivision, is soliciting statements of interest and qualifications from entities interested in pursuing the development of the US 290 East Toll Project ("the Project") through a comprehensive development agreement ("CDA"). The Project is generally described as a tolled section of US 290 East from east of US 183 to east of FM 973 with a minimum of six tolled lanes (three in each direction); the corridor would also include non-tolled frontage roads. The CTRMA is currently evaluating the feasibility of the Project to define the actual scope of the proposed facility. This may result in the extension of the mainlane and/or frontage road lanes to east of FM 973, the inclusion of direct connector ramps at the US 290 East/US 183 interchange, and/or the inclusion of direct connector ramps at the US 290 East/SH 130 interchange. The entity selected for the Project, if any, will be responsible for the planning, design, and construction of the Project through a CDA and may have the opportunity to provide financing, operations, and maintenance for the Project.

The request for qualifications will be available December 16, 2005. Copies may be obtained from the CTRMA website at www.ctrma.org, or by contacting the CTRMA Project Office at (512) 996-9778. Periodic updates, addenda, and clarifications will be posted on the CTRMA website, and interested parties are responsible for monitoring the web-

site accordingly. There will be a pre-proposal conference for interested parties at the CTRMA Office, 301 Congress Avenue, Suite 650, Austin, TX 78701 at 10:00 a.m. C.S.T. on January 10, 2006. Attendance at the pre-proposal conference is not a condition of submitting a proposal. Final responses must be received in the offices of the CTRMA by or before 4:00 p.m. C.S.T. February 3, 2006, to be eligible for consideration.

It is the policy of the CTRMA to encourage the participation of HUBs, minorities, and women in all facets of its activities. The commitment of the proposing entity to utilization of HUBs/DBEs will be considered in the RFQ evaluation process.

Each proposing entity will be evaluated based on the criteria and process set forth in the RFQ.

Questions concerning this RFQ may be submitted via e-mail to Everett Owen at emowen@ctrma.org or in writing to: CTRMA, c/o Everett Owen, 301 Congress Avenue, Suite 650, Austin, TX 78701. All questions must be received by 5:00 p.m. C.S.T. January 23, 2006.

TRD-200505639
Mike Heiligenstein
Executive Director
Central Texas Regional Mobility Authority
Filed: December 7, 2005

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 25, 2005, through December 1, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on December 7, 2005. The public comment period for these projects will close at 5:00 p.m. on January 6, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Erskine Energy, LLC; Location: The project is located within Galveston Bay, in State Tracts (ST's) 5-8B, 5-8A, 6-7A, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 326948; Northing: 3286059. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities within ST 6-7A. Such activities include installation of typical marine barges and keyways, production structures with attendant facilities, and flowlines. The applicant also proposed to construct 11,796 linear feet of 4-inch pipeline. The pipeline will run from the proposed well to an existing well located in ST 5-8B. CCC Project No.: 06-0056-F1 Type of Application: U.S.A.C.E. permit application #23953 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Erskine Energy, LLC; Location: The project is located within Galveston Bay, in State Tracts (ST's) 5-8A and 5-8B, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 239167; Northing: 3285286. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities within ST 5-8A. Such activities include installation of typical marine barges and keyways, production structures with attendant facilities, and flowlines. The applicant also proposed to construct 4,471 linear feet of two 4-inch pipelines. The pipelines will run from the proposed well to an existing well located in ST 5-8B. CCC Project No.: 06-0057-F1 Type of Application: U.S.A.C.E. permit application #23954 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Delta Realty, Inc.; Location: The project is located on West Bay, Lots 1 - 29, Section 6, Terramar Beach Subdivision, Chiquita Street, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Sea Isle, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 299398; Northing: 3224788. Project Description: The applicant proposes to amend Department of the Army (DA) Permit 17875. The applicant requests authorization to dredge 0.87 acre of shallow water and intertidal marsh habitat for boat access, to construct 16 boathouses, and to modify the previously authorized mitigation plan. Specifically, the applicant requests authorization to dredge the center of Basins A and B to provide boat access to the lots surrounding the basins. The basins would be dredged to a depth of 6 feet below mean sea level (MSL or NGVD) to match the depth of the existing nearby channel. Approximately 5,650 cubic yards of sediment would be removed from the 0.87 acre area. Approximately 50 cubic yards of dredged material would be used to prepare the 15-foot band of wetlands next to the bulkhead. (See proposed mitigation plans discussed below.) The remaining 5,600 cubic yards of material would be contained on the project area's upland undeveloped lots. The applicant proposes to construct 16 boathouses. These boathouses would be built using the same guidelines as published in U. S. Army Galveston Engineer District, General Permit 14392(05), "conditions for piers and boathouses in areas with emergent vegetation." The mitigation plan, previously authorized under DA Permit 17875, requires the construction of 1.17 acres of emergent marsh in a 15-foot wide band at the base of the existing bulkhead (29 lots) and in the two areas identified on the project plans as Basins A and B. The applicant proposes to modify the mitigation plan by creating wetlands in a 15-foot wide band next to the bulkhead inside Basins A and B and in front of Lots 1 - 6. The band of proposed wetlands would require 50 cubic yards of fill material to raise the area in front of the bulkhead to an elevation that will support 0.44 acre of Spartina sp. marsh. The remaining 0.73 acre wetland required under DA Permit 17585 would be created offsite at a location to be determined and coordinated with the resource agencies. Another option is for the applicant to provide funds to an appropriate conservation organization for use in their conservation/creation programs. CCC Project No.: 06-0061-F1 Type of Application: U.S.A.C.E. permit application #17875(05) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Aspect Energy, LLC; Location: The project site is located in Galveston Bay, in State Tract (ST) 204, approximately 9.89 miles east of the City of Seabrook, offshore Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 319035; Northing: 3272669. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling and production activities to support the Corsair Prospect Well. Specifically, the applicant is requesting authorization to construct a 250-foot-long by 70-foot-wide by 3-foot thick shell pad, six temporary 3-pile mooring clusters, and a 10-foot by 20-foot timber pile and timber structure well protector platform. Approximately 1,945 cubic yards of material will be discharged into the open bay to support the shell pad. A total of 0.40 acre of open water habitat would be impacted as a result of the proposed activity. CCC Project No.: 06-0062-F1 Type of Application: U.S.A.C.E. permit application #23986 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: LLOG Exploration Texas, L.P.; Location: The project is located in Matagorda Bay State Tracts (ST's) 127 and 128, approximately 15 miles easterly of Port Lavaca, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Keller Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 756563; Northing: 3164002. Project Description: The applicant proposes to install, operate and maintain ST 128 Surface Location No. 1 Well. The well would be directionally drilled to 2 different proposed bottom hole (PBH) locations. Such activities include the installation of typical marine barges and keyways, production structures with attendant facilities, and appurtenant structures. No sales pipelines are proposed under this application. CCC Project No.: 06-0071-F1 Type of Application: U.S.A.C.E. permit application #23984 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: GSC Resources, Inc.; Location: The project is located in Offatts Bayou at 7100 Broadway (Interstate 45) in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters) for the project components: Proposed maintenance dredging coordinates are Zone 15; Easting: 320309; Northing: 3241014. Proposed new dredging coordinates are Zone 15; Easting: 320418; Northing: 3241024. Project Description: The applicant proposes to mechanically maintenance dredge an authorized boat slip and basin to previously authorized depth of minus 6 feet mean low tide. The applicant also proposes to mechanically dredge a small area adjoining that area previously permitted and fronting property that has been acquired since the original permit was granted. Approximately 3,700 cubic yards of sand and silty sand would be dredged. The dredged material would be discharged on the applicant's upland property located adjacent to the work site, raising the elevation of homesites to be developed. No material would be discharged to Waters of the U. S., including wetlands. The project purpose is to dredge new space for resident's use for mooring small boats and to restore the bottom to previously authorized dredged depths. CCC Project No.: 06-0072-F1 Type of Application: U.S.A.C.E. permit application #15827(05) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Blackard Pirates Galveston Development, L.P. (Blackard); Location: The project components are located within the Pirates Beach, Pirates Cove, and Lafitte's Cove Subdivisions in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate UTM Coordinates of original Disposal Maintenance Placement Areas (DMPA's) in NAD 27 (meters) for the Department of the Army (DA) Permit 17800 are: DMPA "A" Zone 15; Easting: 311387; Northing: 3234006; DMPA "B" Zone 15; Easting: 312225; Northing: 3232893; DMPA "C" Zone 15; Easting: 311250; Northing: 3232400; DMPA "D" Zone 15; Easting: 310412; Northing: 3231699. Project Description: The applicant proposes to amend Department of the Army (DA) Permit 17800 to update the current status of the DMPA's authorized in the original permit. In addition, the applicant requests authorization to provide a replacement DMPA which could be used to contain material excavated during maintenance dredging of the Laffite's Cove canals. This DMPA would be provided to the Lafitte's Cove Nature Society (LCNS) for use in perpetuity as the DMPA for that subdivision. As such, the following changes would be made to DA Permit 17800: remove DMPA "A" from the permit; remove a portion of DMPA "B" from the permit which has been sold and designated for future development; reconfigure the boundary for the remainder of the original DMPA "B" (avoiding wetlands) as the replacement DMPA to be deeded in perpetuity to the LCNS for all future maintenance of Laffite's Cove canals; remove DMPA "C", which has been sold, from the permit; and remove DMPA "D" from the permit. The land has been sold to Kahala Development with conditions that it not be used for development. This tract is currently proposed as the mitigation site for DA Permit application 23756, also on public notice at this time. CCC Project No.: 06-0074-F1 Type of Application: U.S.A.C.E. permit application #17800(12) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project is located in North Galveston Bay approximately 6.1 miles northeast of Smith Point in State Tracts (ST's) 99 and 114, in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters) for the project are: Proposed Well Location/beginning of proposed Pipeline is Zone 15; Easting: 319416.07; Northing: 3276636.88; End of proposed Pipeline at existing Rosetta Resources, Inc. Platform is Zone 15; Easting: 670970.00; Northing: 3314345.00. Project Description: The applicant requests authorization to drill ST 114 Well No. 1 and install and maintain a production platform, a well platform and install flowlines from the proposed well to the proposed production platform in ST 114. Additionally, the applicant proposes to construct a 6-inch diameter pipeline from said well location to an existing Rosetta Resources, Inc. platform located in ST 99. The proposed pipeline would be approximately 2,530 feet in length. The applicant proposes to place 2,667 feet of fill for a well pad if needed. CCC Project No.: 06-0075-F1 Type of Application: U.S.A.C.E. permit application #23998 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project is located approximately 5.7 miles southeast of Baytown in Trinity Bay State Tract (ST) 48, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Umbrella Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 323239; Northing: 3284177. Project Description: The applicant proposes to drill Well No. 1 in ST 48 and install and maintain a production platform, a well platform and lay flowlines from the well to

the production platform. The applicant proposes to place 2,667 cubic yards of fill to construct a well pad measuring 240 by 100 by 3 feet. A survey using side scan sonar was performed. No shell reefs or oysters were found within 500 feet of the proposed location. CCC Project No.: 06-0076-F1 Type of Application: U.S.A.C.E. permit application #23999 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Gulf Marine Institute of Technology & BioMarine Technology, Inc.; Location: The project is located in the Gulf of Mexico, in the southwest corner of State Tract (ST) 526, within the Matagorda Anchorage Area, offshore of Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: San Antonio Bay, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 771826; Northing: 3134068. Project Description: The applicant proposes to extend the timeframe for Department of the Army (DA) Permit 11830(09), which was authorized on June 4, 1999, for a modification of an existing oil platform complex from extraction of petroleum products to a commercial mariculture production. The modifications authorized by DA Permit 11830(09) were not initiated or completed. DA Permit 11830 authorized the erection and maintenance of structures and the performance work for producing oil and gas from a single well in ST 526-L. Amendment (01) deleted the part of the permit plans for a producing facility and replaced them with plans for platforms. Amendment (02) revised the plans to include additional platforms and the drilling of multiple wells. Amendment (03) authorized a slight revision in the location of the project. Amendment (04) authorized the addition of a temporary buoy with an emergency marker. Amendments (05) and (06) both extended the time of the project. Amendment (07) authorized the addition of a well pad and walkway. Amendment (08) extended the time of the project. The modification of the platform proposed under DA permit application 11830(10) will include the construction, remodeling and placement of the following components: (1) sea cages located between and around the main platform and three satellite platforms; (2) a research hatchery/nursery, including algal and micro-invertebrate food production facilities; (3) water chemistry laboratory; (4) crew quarters; (5) galley; and (6) new research facilities and administrative office. The proposed project will consist of two phases. The first phase will encompass approximately 50 acres of development contained within an aquafence, and the second phase will encompass approximately 500 acres of development contained within an aquafence. Several types of sea cages are planned to be constructed and placed as shown in the attached drawings. The farming cages and aquafence surrounding the project are planned to be attached to the gulf bottom with mooring lines, concrete anchors and conventional sea anchors. Phase two necessitates the use of up to 100 additional sea cages. The applicant's plans (Pages 1, 2, 3, 7, 8, 9 and 10 of 20) are enclosed. The entire set of plans (Pages 1 - 20 of 20) and a detailed project description (Pages 1 - 5 of 5) can be viewed at our website at http://intranet.swg.usace.army.mil/ or a hard copy can be obtained by contacting the project manager listed on page four of this public notice. CCC Project No.: 06-0077-F1 Type of Application: U.S.A.C.E. permit application #11830(10) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: West Brazoria Drainage District Number 11; Location: The project is located from FM 521 south, to the northern boundary of the Texas Parks and Wildlife (TPWD) Nannie M. Stringfellow Wildlife Management Area in southwestern Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Cedar Lane, Texas. Approximate UTM Coordinates in NAD 27 (meters): Upper Project Limit: Zone 15; Easting: 237835; Northing: 3206824; Lower Project Limit: Zone 15; Easting: 240873; Northing: 3205502. Project Description: This is an After-The-Fact (ATF) request for a Department of the Army (DA) Permit, though there is some grading that remains to be done above the ordinary high water mark (OHWM). The applicant performed unauthorized mechanical land clearing and reshaping of the eastern bank of Cedar Lane Creek, below the ordinary high water line, which resulted in an unauthorized discharge of fill material into waters of the United States. Cedar Lane Creek is a tidally-influenced navigable water. The estimated impacts based on information from our Compliance Section are as follows: The first approximately 2,000 feet of the eastern bank of Cedar Lake Creek was graded (unauthorized mechanical land clearing and reshaping) below the OHWM, resulting in an unauthorized discharge of fill material into waters of the U. S. Assuming there was a 3-foot fringe wetland the full length of that stretch, there were impacts to a maximum of 6,000 square feet (0.14 acres) of wetlands; another approximately 300-foot stretch on the eastern bank of Cedar Lake Creek was graded above the OHWM line resulting in no jurisdictional impacts; another approximately 5,000-foot stretch on the eastern bank of Cedar Lake Creek had no impacts at all; and another approximate 7,000-foot stretch on the eastern bank of Cedar Lake Creek was graded with the majority of the grading above the OHWM line. There are existing fringe wetlands along portions of this stretch that were graded. Other graded areas were not wetlands. The complete project was to extend south from FM 521 to the northern property boundary of the Texas Parks and Wildlife (TPWD) Nannie M. Stringfellow Wildlife Management Area. To compensate for unauthorized impacts, the applicant proposes to preserve one of three purchased 5-acre tracts of land and either place it under a third party conservation easement to protect it in perpetuity or have the entity take fee-simple ownership of the agreed upon parcel. The Cradle of Texas Conservancy has looked at the three tracts of land (Lot Numbers 32, 105 and 165) and stated that they would be interested in taking fee-simple ownership of any of the lots; however, in order of preference, they listed Lot #165, Lot #105 and then Lot #32. Lot #32, located north of the Freeport Hurricane Protection Levee in Brazoria County, is a tidal marsh. Lot #105, which is south of the levee, is subject to fresh water runoff from the Village of Oyster Creek and surrounding areas. Lot #165, an old sand pit which has filled with water, is a haven for waterfowl. The location of the lots is as follows: If coming from Galveston along the Bluewater Highway, first proceed to the only red light in Surfside. At the red light, turn right onto State Highway 332 and go over the Intracoastal Waterway Bridge for 1.7 miles to County Road (CR) 690. Turn right onto CR 690, which is also Levee Road. Go 0.4 miles on CR 690. Lot 32 is on the right side of the road and Lot 105 is on the left side of the road. Each tract is marked with wooden stakes which have been painted bright orange. To get to Lot 165, continue on CR 690 for an additional 1.2 miles. Lot 165 is on the left and is the south five acres of a small lake, which used to be a sand pit. The lake connects to the old channel of Oyster Creek, which provides a reliable supply of fresh water to the lake. CCC Project No.: 06-0078-F1 Type of Application: U.S.A.C.E. permit application #23467 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P. O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200505609
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: December 6, 2005

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period November 2005, as required by Tax Code, §202.058, is $59.71 per barrel for the three-month period beginning on August 1, 2005, and ending October 31, 2005. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of November 2005, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period November 2005, as required by Tax Code, §201.059, is $10.03 per mcf for the three-month period beginning on August 1, 2005, and ending October 31, 2005. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of November 2005, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P. O. Box 13528, Austin, Texas 78711-3528.

TRD-200505589
Martin Cherry
Deputy General Counsel
Comptroller of Public Accounts
Filed: December 5, 2005

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Local Sales Tax Rate Changes Effective January 1, 2006

A 1/2 percent special purpose district sales and use tax will become effective January 1, 2006 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Sullivan City Crime Control and Prevention District	5108519	.005000	SEE NOTE 1

A 1 percent special purpose district sales and use tax will become effective January 1, 2006 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Airline Improvement District	5101589	.010000	SEE NOTE 2
Harris County Emergency Services District No. 5	5101598	.010000	SEE NOTE 3
Harris County Emergency Services District No. 80	5101605	.010000	SEE NOTE 4
Jeff Davis County Emergency Services District No. 1	5122511	.010000	SEE NOTE 5

NOTE 1 The boundaries for the Sullivan City Crime Control and Prevention District are the same as the boundaries of the City of Sullivan City. The total rate in the City of Sullivan City will be 8¼%.

NOTE 2 The Airline Improvement District is located in the north central portion of Harris County. The district is located entirely within the Houston MTA, which has a transit sales and use tax, but the district does not include any area within the City of Houston ZIP Code 77037 is partially located within the district. Contact the district representative at 281/7571788 for additional boundary information.

NOTE 3 The Harris County Emergency Services District No. 5, which provides emergency medical and ambulance services, is located in the northeastern portion of Harris County. The district does not include any area within the City of Houston or the Houston MTA. The district overlaps and contains most of the same territory as the Harris County Emergency Services District No. 80. The unincorporated area of Harris County in ZIP Code 77532 is partially located in the Harris County Emergency Services District No. 5. Contact the district representative at 281/328-6810 for additional boundary information.

NOTE 4 The Harris County Emergency Services District No. 80, which provides fire and rescue services, is located in the northeastern portion of Harris County. The district does not include any area within the City of Houston or the Houston MTA. The district overlaps and contains most of the same territory as the Harris County Emergency Services District No. 5. The unincorporated areas of Harris County in ZIP Codes 77521, 77532, and 77562 are partially located in the Harris County Emergency Services District No. 80. Contact the district representative at 713/984-8222 for additional boundary information.

NOTE 5 The boundaries of the Jeff Davis County Emergency Services District No. 1 are the same boundaries as Jeff Davis County and the Jeff Davis Health Services Special Purpose District, both of which have a sales and use tax, excluding any area within the City of Valentine. Contact the district representative at 432/426-3900 for additional boundary information.

TRD-200505635
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: December 7, 2005

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Request for Information

Pursuant to Chapter 403, Texas Government Code, and Section 5.10, Texas Tax Code, the Office of the Comptroller of Public Accounts (Comptroller) issues this Request for Information (RFI #175d) from interested parties for providing certain oil and gas computer systems services as set forth herein (Project). The Project is to provide a multiple user automated and integrated petroleum reserve and economic evaluation software system. The system shall calculate all proved producing oil and gas appraisal parameters using decline curve analysis software with full user interface, import, export and reporting capabilities. Comptroller requests information from the foregoing parties interested in providing services, if requested, and other information for this Project. No contract award will result from this RFI.

Background: Comptroller is considering purchasing or leasing engineering software capable of providing accurate estimations of the value of proved producing petroleum reserves. While this RFI is not a solicitation and any person or company may respond to this RFI, Comptroller anticipates respondents to this RFI would have all of the following qualifications, at a minimum, and would be able to demonstrate: (1) oil and gas appraisal computer systems and information technology project management experience; and (2) expertise in integrated decline curve, material balance, economic and database software to quantify proved producing petroleum reserves which are anticipated to be commercially recovered from a given date forward based upon geological, engineering and economic data.

Contact: Entities interested in submitting information in response to this RFI should contact Tim Wooten, Property Tax Division, Comptroller of Public Accounts, 1711 San Jacinto, Room 402, Austin, Texas 78701, telephone number: (512) 305-9838. All written inquiries and questions must be received at the location specified above.

Responses: Comptroller reserves the right, in its sole judgment and discretion, to accept or reject any or all responses received. Responses received by the deadline may be subject to evaluation by Comptroller and/or a committee and all responses shall become the property of Comptroller. Responses will be public information and available to any requester. Comptroller is under no legal or other obligation to issue any solicitation or execute a contract or make any selection or award on the basis of this notice or any responses received as a result of the issuance of this RFI or any subsequent solicitation. Comptroller shall pay no costs incurred by any interested party or any other entity in responding to this RFI.

Closing Date: All responses to this RFI must be submitted to the address set forth above no later than 5:00 p.m. CZT, on Friday, February 10, 2006. Respondents are solely responsible for ensuring timely receipt of all responses at the location set forth above on or before the deadline. Late responses received after this time and date will not be considered. All responses must be submitted in the format designed and provided by Comptroller herein. Respondents must submit all of the following information in response to this RFI:

* Complete and current identifying information, including firm name, address, telephone number, contact person, and other current information, such as type of company and specialty, if any;

* Name of employees who could provide the computer system and services, if requested, as well as their qualifications, relevant experience, and qualifications of their employer, if any;

* Complete and accurate description of the specific information and qualifications set forth in the Request for Information and Background sections of this RFI;

* Name, qualifications and experience of a proposed project manager who would be responsible for project management and successful completion of the Project; and

* Appropriate cost-estimate information, including hourly or daily rates, costs, expenses, and other information, as appropriate, if requested.

TRD-200505631
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 7, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/12/05 - 12/18/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/12/05 - 12/18/05 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200505626
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 7, 2005

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Texas Commission on Environmental Quality

Notice of District Petition

Notices mailed November 28, 2005 through December 1, 2005

TCEQ Internal Control No. 11032005-D01; Burnet Bay, LTD. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 473 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code, Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are three lienholders, Capital Farm Credit, FLCA., Carl R. Woods and Floyd D. Woods on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing their consent to the creation of the proposed District; (3) the proposed District will contain approximately 403.95 acres located within Harris County, Texas; and (4) the proposed District is within the corporate boundaries of the

City of Baytown, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 1737, effective August 25, 2005, the City of Baytown, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control abate and amend local storm waters; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants and enterprises, and parks and recreation facilities consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $21,400,000.

TCEQ Internal Control No. 11042005-D02; Rio Vista C.M.I., Ltd. (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No. 145 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Machovia Bank, National Association, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 124.65 acres located within Fort Bend County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Richmond, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-14, effective August 15, 2005 the City of Richmond, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) purchase, construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, enterprises, parks and recreational facilities consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $10,500,000.

TCEQ Internal Control No. 10202005-D02; 80.095 Acre Joint Venture, 129.738 Acre Joint Venture, 207.266 Acre Joint Venture, 27.706 Acre Joint Venture and Lennar Homes of Texas Land and Construction, Ltd. (Petitioners) filed a petition for creation of Montgomery County Municipal Utility District No. 107 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 349.8 acres located within Montgomery County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Conroe, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2811-05, effective September 8, 2005, the City of Conroe, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $11,000,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200505624

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: December 7, 2005

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Notice of Intent to Perform Removal Action at the Harvey Industries Proposed State Superfund Site

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) hereby issues public notice of intent to perform a removal action, as provided by Texas Health and Safety Code, §361.133, for the Harvey Industries proposed state Superfund site. The site, including all land, structures, appurtenances, and other improvements, is approximately 87.79 acres located at the southeast corner of the intersection of FM 2495 and State Highway 31, in Athens, Henderson County, Texas. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The Harvey Industries proposed state Superfund site is a former television cabinets and circuit board manufacturing facility. The facility was in operation from approximately 1955 - 1992. In 1972 the facility began the process of converting a clay pit located on the west side of the site into a landfill. The landfill is reported to have received office wastes, plant cafeteria wastes, cardboard, particle board, vinyl, wood, sawdust, metal cans, dried paint wastes, and incineration ash.

Prior investigations conducted at this site indicated the on-site landfill is generating landfill gas at rates that are causing significant methane accumulation in the subsurface. The landfill gas was found to have migrated outside of the boundaries of the landfill. Methane concentrations above 25% of the lower explosive level were measured 50 feet from the on-site warehouse buildings. To mitigate the migration of the landfill gas to off-site and on-site facilities, the TCEQ is conducting an immediate action to protect human health and the environment.

A portion of the record for this site, including documents pertinent to the removal action, is available for review during regular business hours at the Henderson County Library, 121 South Prairieville, Athens, Texas 75751. Copies of the complete public record file may be obtained during business hours at the commission's Records Management Center, Building E, North Entrance, First Floor, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

For further information, please contact the project manager, Fay Duke, TCEQ Remediation Division, at (800) 633-9363, extension 2443.

TRD-200505618
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: December 6, 2005

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, and the proposed technical requirements necessary to bring the entity back into compliance and when the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 16, 2006**. The commission will consider any written comments received; and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P. O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 16, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Daley C. Russell Jr. dba Russell's Corner Food Mart; DOCKET NUMBER: 2004-1667-PST-E; TCEQ ID NUMBERS: 71095 and RN102227139; LOCATION: 401 East Adams Avenue, Temple, Bell County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of two petroleum underground storage tanks; PENALTY: $2,100; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: PT Gas Service Company, L.C. dba Workingmans Friend 529; DOCKET NUMBER: 2004-0506-PST-E; TCEQ ID NUMBERS: 0003615 and RN102040359; LOCATION: 1508 Southwest Parkway, Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: convenience store with the retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and TWC §26.3475(c)(1), by failing to reconcile inventory control records on a monthly basis in a manner sufficiently accurate to detect a release as small as the sum of 1% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.74, by failing to investigate a suspected release from the USTs; and 30 TAC §334.72, by failing to notify the TCEQ within 24 hours of a suspected release; PENALTY: $13,500; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-200505615
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: December 6, 2005

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 16, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P. O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 16, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Al Barkaat Enterprises, Inc. dba Amans Grocery Store; DOCKET NUMBER: 2005-0184-PST-E; TCEQ ID NUMBERS: 36861 and RN102719895; LOCATION: 703 East Second Street, El Campo, Wharton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of petroleum underground storage tanks (USTs); PENALTY: $1,120; STAFF ATTORNEY: Amie Richardson, Litigation Division, MC 175, (512) 239-2999; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: American Chrome & Chemicals L.P.; DOCKET NUMBER: 2000-0711- MLM-E; TCEQ ID NUMBER: RN100210814; LOCATION: 3800 Buddy Lawrence Drive on the south bank of the Corpus Christi Inner Harbor, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: manufacturing plant for processing chromite ore and producing chromium compounds; RULES VIOLATED: 30 TAC §335.4 and §327.5, and TWC, §26.121 and §26.266, by failing to prevent an unauthorized discharge of groundwater contaminated with industrial waste that originated from the facility into surface waters of the state because the coffer dam groundwater recovery system was not in operation from January 17 - January 27, 2000; 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number 00349, Effluent Limitations and Monitoring Requirement 1, and TWC, §26.121, by failing to comply with permitted limits at Outfall 101A; 30 TAC §116.115(c) and Air Permit Number 7736, Special Condition Number 1, by failing to comply with special permit conditions by allowing nitrous oxide emissions in excess of the permit limit for a failed stack test dated June 29, 2000; PENALTY: $20,625; STAFF ATTORNEY: Amie Richardson, Litigation Division, MC 175, (512) 239-2999; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Exxon Mobil Corporation dba ExxonMobil Refining & Supply Company; DOCKET NUMBER: 2004-0818-AIR-E; TCEQ ID NUMBERS: HG-0232-Q and RN102579307; LOCATION: 2800 Decker Drive, Baytown, Harris County, Texas; TYPE OF FACILITY: petroleum refining plant; RULES VIOLATED: 30 TAC §116.715(a), TCEQ Flexible Permit Number 18287/PSD-TX-730M2, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,500; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: MBE, Inc. dba Bryan's 2 and dba Bryan's 3; DOCKET NUMBER: 2003- 1144-PST-E; TCEQ ID NUMBERS: RN101432334 and RN102375557; LOCATION: 901 East Main, San Augustine, and 462 State Highway 7 East, San Augustine County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: at Bryan's 2, 30 TAC §334.45(c)(3)(A), by failing to install a secure anchor at the base of the dispenser in each pressurized delivery or product line and a UL-listed emergency shutoff valve in piping systems in which regulated substances are conveyed under pressure to an aboveground dispensing unit; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.48(c), by failing to conduct inventory control and reconciliation for all USTs involved in the retail sales of petroleum substances used as motor fuel; at Bryan's 3, 30 TAC §334.45(c)(3)(A), by failing to install a secure anchor at the base of the dispenser in each pressurized delivery or product line and a UL-listed emergency shutoff valve in piping systems in which regulated substances are conveyed under pressure to an aboveground dispensing unit; 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test a line detector at least once per year for performance and operational reliability; 30 TAC §334.48(c), by failing to reconcile inventory control records on a monthly basis in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1% of the total substance flow-through for the month plus 130 gallons; and 30 TAC §334.22(a) and §334.128, by failing to pay UST and aboveground storage tank fees; PENALTY: $18,000; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200505616
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: December 6, 2005

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIPs).

A public hearing will be held in Austin, Texas, on January 10, 2006, at 10:00 a.m. in Building E, Room 201S, at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral or written statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

The proposed rulemaking would repeal the state regulations implementing the Texas Clean Fleet Program in its entirety, in accordance with Senate Bill 1032, 79th Legislature, 2005. (Rule Project No. 2005-067-114-EN)

In addition, the proposed rulemaking would implement House Bill 1540, 79th Legislature, 2005, as well as add language that the Austin Early Action Compact members have requested be added to more greatly protect public health and safety. (Rule Project No. 2005-064-114-EN)

The proposed rulemaking would also amend the definition of additive; specify that the executive director must consult with the EPA before approving an alternative test method; revise the documentation requirements for the alternative diesel formulation approval procedures; revise the minimum requirements for candidate fuel formulations to only allow diesel fuel with less than 15 parts per million sulfur to be used for testing purposes; specify that the test engine used for alternative diesel fuel formulation testing must have a minimum of 125 hours of use and exhibit stable operation before beginning the testing and must not exceed 110% of its applicable exhaust emission standards when using the reference fuel; add clarifying language to the alternative test sequences to specify the number of hot start test cycles that must be performed for each sequence; revise the emission comparison requirements to be more consistent with similar California Air Resource Board regulations by removing the emissions of total hydrocarbons (THC) and non-methane hydrocarbons (NMHC) from the comparison calculation but specifying that the emissions of THC and NMHC of the candidate fuel must not exceed the emission certification standards applicable to the year model of the test engine; clarify that only those records relating to sampling require a statement declaring the appropriate aromatic hydrocarbon content standard of the fuel; revise reporting requirements for producers with alternative emission reduction plans to include information in their quarterly report that is required to be collected in accordance with the sampling and testing requirements; establish procedures that require producers to submit alternative emission reduction plans that are developed in accordance with the EPA's Unified model to demonstrate that the average of all on-road diesel fuel produced in any given calendar year that is sold, offered for sale, supplied, or offered for supply by the producer in the counties affected by these rules achieves at least a 5.5% reduction in nitrogen oxide emissions for the year 2007, and at least a 6.2% reduction from the average of all non-road diesel produced by the producer for use in the affected counties, and allow alternative emission reduction plans to use diesel credits from early gasoline sulfur reduction that can only be generated from the gasoline supplied by the producer to the attainment counties in 2003, 2004, and 2005, and can only be used to demonstrate compliance through December 31, 2010, in attainment counties within the Texas low emission diesel control area; and correct citations and cross-references. (Rule Project No. 2005-063-114-EN).

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Holly Vierk, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

Written comments may be submitted to Brandon Smith, MC 206, Chief Engineer's Office, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087; faxed to (512) 239-5687; or e-mailed to *siprules@tceq.state.tx.us*. All comments should reference the rule project numbers that they pertain to. Comments must be received by 5:00 p.m. on January 17, 2006. The proposed rules may be viewed on the commission's web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Morris Brown, Air Quality Planning and Implementation Division, at (512) 239-1438 or Erik Gribbin, Air Quality Planning and Implementation Division, at (512) 239-2590.

TRD-200505569
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 1, 2005

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Notice of Water Rights Application

Notice issued November 30, 2005:

APPLICATION NO. 5893; Blanch Double Diamond Development Corp., 415 Highway 46 West, Boerne, Texas, 78006, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to 11.143, Texas Water Code, and TCEQ Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Blanch Double Diamond Development Corp., applicant, seeks to maintain an existing, exempt on-channel dam and reservoir with a capacity of 25 acre-feet of water (normal maximum operating level) on an unnamed tributary of Deep Hollow Creek, tributary of Frederick Creek, tributary of Cibolo Creek, tributary of the San Antonio River, San Antonio River Basin, with a surface area of 3.5 acres of land for in-place recreation purposes in Kendall County. The dam is located in the C&M. R.R. Co. Original Survey No. 283, Abstract No. 746. Station 0 +00 on the centerline of the dam is S 72.858 W, 1,462 feet from the northeast corner of the C&M. R.R. Co. Survey at Latitude 29.753 N, Longitude 98.792 W, approximately 5.0 miles southwest direction from the City of Boerne, Kendall County, Texas. Ownership of the innundated land is evidenced by a General Warranty Deed filed as Volume 866, Pages 472 though 482 in the official records of Kendall County. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on March 24, 2005. Additional information was received on June 14, August 4, and November 3, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 12, 2005. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case

hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200505625
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 7, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 16, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 16, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: 18 Hours Incorporated dba 18-Hour Food Mart; DOCKET NUMBER: 2005-1461-PST-E; IDENTIFIER: Regulated Entity Reference Number (RN) 100761154; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $640; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: AT&T Communications, Inc.; DOCKET NUMBER: 2005-1240-PST-E; IDENTIFIER: RN100561612; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: fleet refueling center for company vehicles; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(a) and (c)(1), by failing to ensure the underground storage tanks (USTs) are provided a method, or combination of methods, of release detection capable of detecting a release; 30 TAC §334.8(c)(5)(B)(ii) and (C), by failing to renew a delivery certificate by timely and proper submission of a new UST registration and self-certification form and by failing to ensure that all USTs are properly identified; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Albany; DOCKET NUMBER: 2005-1424-PWS-E; IDENTIFIER: RN101392272; LOCATION: Albany, Shackelford County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM); PENALTY: $188; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(4) COMPANY: Bandera Independent School District; DOCKET NUMBER: 2005-1239-MWD-E; IDENTIFIER: RN101635688; LOCATION: Bandera, Bandera County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §30.350(d) and Permit Number WQ0013783001, by failing to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration; and 30 TAC §305.125(1), Permit Number WQ0013783001, and the Code, §26.121(a)(1), by failing to prevent ponding of treated effluent in the drain field area; PENALTY: $4,560; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Joann Hendon dba Bandera Pass Water System; DOCKET NUMBER: 2005-1216-PWS-E; IDENTIFIER: RN101220192; LOCATION: Bandera, Bandera County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(c)(5)(A), by failing to monitor and record the disinfectant residual at representative locations throughout the distribution system; 30 TAC §290.44(d), by failing to maintain a minimum pressure of 35 pounds per square inch (psi); 30 TAC §290.46(e)(4)(A) and (f) and THSC, §341.033(a), by failing to have the water system production, treatment, distribution, and microbiological sampling under the direct supervision of a water works operator who holds at least a Class D license and by failing to maintain monthly operation reports; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §291.41(c)(3)(A), by failing to submit well completion data to the commission prior to placing the well into service; and 30 TAC §290.45(b)(1)(A)(i) and (ii) and THSC, §341.0315(c), by failing to meet the commission's minimum well capacity requirement of 1.5 gallons per minute per connection and by failing to meet the commission's minimum pressure tank requirement of 50 gallons per connection; PENALTY: $1,798; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Beaumont I.S.D. Public Facility Corporation; DOCKET NUMBER: 2005-1570-PST-E; IDENTIFIER: RN101377307; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide a proper method of corrosion protection for the UST system; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Brookeland Fresh Water Supply District; DOCKET NUMBER: 2005-1276-PWS-E; IDENTIFIER: RN101283224; LOCATION: near Sam Rayburn, Sabine County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to maintain the MCL for TTHM; PENALTY: $318; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: City of Caddo Mills; DOCKET NUMBER: 2005-1418-MWD-E; IDENTIFIER: RN101721488; LOCATION: Caddo Mills, Hunt County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10425001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for ammonia-nitrogen and by failing to submit discharge monitoring data as required; PENALTY: $2,074; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Calhoun County Navigation Industrial Development; DOCKET NUMBER: 2005-1409-AIR-E; IDENTIFIER: RN100226638; LOCATION: near Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: electrical power plant; RULE VIOLATED: 30 TAC §122.146(2), Federal Operating Permit Number O-00044, and THSC, §382.085(b), by failing to submit the Title V federal operating permit compliance certification; PENALTY: $1,726; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2004-0958-AIR-E; IDENTIFIER: RN102320850; LOCATION: Borger, Hutchinson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: THSC, §382.085(a), by failing to comply with the statutory prohibition on emission of unauthorized air contaminants; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit the initial emission event report in a timely manner; 30 TAC §113.110 and §116.715(a) and (c)(7), Air Permit Number 21918, 40 Code of Federal Regulations (CFR) §63.11(b)(5) and §63.104(b), and THSC, §382.085(b), by failing to maintain an emission rate below the plant-wide maximum allowable emission limits of 45.03 pounds per hour of 1,3-butadiene and by failing to monitor Unit 45 cooling tower water associated with the heat exchanger; 30 TAC §113.130 and §116.715(a), Air Permit Number 21918, 40 CFR §§63.11(b)(5), 63.172(d), and 63.182(d)(2)(i), and THSC, §382.085(b), by failing to ensure that the emission control device is operational and by failing to accurately report the number of valves monitored in August and November 2003, on the semiannual report; and 30 TAC §113.230 and §116.715(a), Air Permit Number 21918, 40 CFR §60.502(e)(3) - (5) and §63.422(a), and THSC, §382.085(b), by failing to cross-check the tank identification numbers with the tank vapor tightness documentation and by failing to notify the owners of trucks, with invalid truck tightness documentation, within the time frames after the tanks were loaded, by failing to assure that a nonvapor-tight tank would not be reloaded before obtaining vapor tightness documentation, and by failing to conduct a visual inspection of the internal floating roof; PENALTY: $78,697; ENFORCEMENT COORDINATOR: David Flores, (512) 239-1165; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(11) COMPANY: Chevron U.S.A., Inc.; DOCKET NUMBER: 2005-1091-AIR-E; IDENTIFIER: RN100226380; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 8621, and THSC, §382.085(b), by failing to replace the catalyst charge, or re-evaluate it to ensure proper operation, after the annual evaluation indicated that it no longer functioned properly; 30 TAC §122.145(2) and THSC, §382.085(b), by failing to include all instances of deviations on the deviation report; 40 CFR §60.482-4(a) and THSC, §382.085(b), by failing to operate a pressure relief device with no detectable emissions; 30 TAC §205.6 and the Code, §5.702, by failing to pay late fees; and 30 TAC §116.115(c), Permit Number 8621, and THSC, §382.085(b), by failing to maintain the records for the monthly air-fuel ratios; PENALTY: $3,078; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(12) COMPANY: Countryside Nursery & Landscape, Inc.; DOCKET NUMBER: 2005-1310-EAQ-E; IDENTIFIER: RN104662390; LOCATION: Austin, Williamson County, Texas; TYPE OF FACILITY: nursery and landscape retail center; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a plan to protect the Edwards Aquifer prior to commencing construction of a retail center with a storage area, associated driveways, and parking; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(13) COMPANY: David Starnes dba Dr. Detail; DOCKET NUMBER: 2005-1533-IWD-E; IDENTIFIER: RN104676325; LOCATION: near The Woodlands, Montgomery County, Texas; TYPE OF FACILITY: auto detailing; RULE VIOLATED: the Code, §26.121(a), by failing to obtain authorization to discharge process wastewater; PENALTY: $600; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: David Van Der Heide dba Drentex Dairy; DOCKET NUMBER: 2005-1411-AGR-E; IDENTIFIER: RN102900693; LOCATION: near Comanche, Comanche County, Texas; TYPE OF FACILITY: commercial dairy; RULE VIOLATED: 30 TAC §305.125(1) and General Operating Permit Number TXG920000, by failing to comply with permit conditions and maintain vegetative growth in the uncontained feeding areas; PENALTY: $2,716; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(15) COMPANY: East Cedar Creek Fresh Water Supply District; DOCKET NUMBER: 2005-1158-PWS-E; IDENTIFIER: RN101436905 and RN101436749; LOCATION: near Mabank, Henderson County, Texas; TYPE OF FACILITY: public water supplies; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and haloacetic acids (HAA5); PENALTY: $1,965; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: Foremost Holdings, Inc. dba Dyno-Mart of Mexia; DOCKET NUMBER: 2004-1779-PST-E; IDENTIFIER: RN104217856; LOCATION: Mexia, Limestone County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay UST annual registration fees; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: GK Singh Enterprises, L.L.C. dba Express EZ Mart; DOCKET NUMBER: 2005-1296-PST-E; IDENTIFIER: RN102347879; LOCATION: Sherman, Grayson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,280; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: H&H Snacks, Inc. dba Snack and Save 2, Snack and Save 9, and So-Lo Grocery 101; DOCKET NUMBER: 2005-1127-PST-E; IDENTIFIER: RN101431831, RN101432581, and RN101894889; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and (B)(ii), by failing to timely renew a previously issued delivery certificate and by failing to make available to a common carrier a valid, current delivery certificate; and 30 TAC §334.7(d)(3), by failing to provide written notice of any change or additional information concerning the UST system; PENALTY: $3,948; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013.

(19) COMPANY: Rick Hamilton; DOCKET NUMBER: 2005-1673-LII-E; IDENTIFIER: RN104095153; LOCATION: Farwell, Parmer County, Texas; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license; PENALTY: $500; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(20) COMPANY: Harlingen Shrimp Farms, Limited; DOCKET NUMBER: 2005-1460-IWD-E; IDENTIFIER: RN102341146; LOCATION: Los Fresnos, Cameron County, Texas; TYPE OF FACILITY: shrimp farm; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 03946000, and the Code, §26.121(a), by failing to comply with permitted effluent limits for total suspended solids (TSS); PENALTY: $5,600; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(21) COMPANY: Harris County Municipal Utility District 284; DOCKET NUMBER: 2005-1600-MWD-E; IDENTIFIER: RN103214839; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 12949001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for TSS; PENALTY: $1,360; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Jimmie Hahn, Inc.; DOCKET NUMBER: 2005-1132-IWD-E; IDENTIFIER: RN100690874; LOCATION: Brenham, Washington County, Texas; TYPE OF FACILITY: ready-mixed concrete; RULE VIOLATED: 30 TAC §305.125(1), Water Quality Permit Number TXG110371, and the Code, §26.121(a), by failing to comply with the permit effluent limits for TSS and pH and by failing to submit the discharge monitoring reports and include all required data on the forms; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: Nooruddin Hirani dba King Valley Grocery; DOCKET NUMBER: 2005-1367-PST-E; IDENTIFIER: RN102901766; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and the Code, §26.3475(a) and (c)(1), by failing to monitor USTs for releases and by failing to provide proper release detection; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: Liberty City Water Supply Corporation; DOCKET NUMBER: 2005-1448-MWD-E; IDENTIFIER: RN102915394; LOCATION: Kilgore, Gregg County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11179001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for ammonia-nitrogen; and 30 TAC §319.4 and TPDES Permit Number 11179001, by failing to submit a correctly completed annual sludge report; PENALTY: $1,276; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(25) COMPANY: Linh-Son Buddhist Association of Texas; DOCKET NUMBER: 2005-1574-PWS-E; IDENTIFIER: RN102317807; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: religious institution with a public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine water samples for bacteriological analysis and by failing to post public notice; PENALTY: $1,275; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Little Big Inch Pipeline Company, Inc.; DOCKET NUMBER: 2005-1542-AIR-E; IDENTIFIER: RN100821701; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: motor fuel dispensing station; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by allegedly allowing the transfer of gasoline with a Reid vapor pressure greater than seven maximum pounds per square inch absolute; PENALTY: $960; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(27) COMPANY: M A S Brothers, Inc. dba Rosehill Country Store; DOCKET NUMBER: 2005-0889-PST-E; IDENTIFIER: RN101192136; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to monitor USTs for releases, by failing to provide proper release detection, and by failing to test

a line leak detector at least once per year; 30 TAC §334.49(c)(2)(C) and (4) and the Code, §334.3475(d), by failing to have the impressed current cathodic protection system regularly inspected and by failing to have the cathodic protection system tested by a qualified corrosion specialist or corrosion technician; 30 TAC §115.246(4), (6), and (7)(A) and THSC, §382.085(b), by failing to maintain proof of attendance and completion of training and documentation of all Stage II training for each employee, by failing to maintain a daily inspection log, and by failing to maintain records on-site at facilities ordinarily manned during business hours and make them immediately available for review upon request; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(3)(A) and THSC, §382.085(b), by failing to maintain all components of the Stage II system in proper operating condition; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay UST registration fees; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: City of Mathis; DOCKET NUMBER: 2005-1328-PWS-E; IDENTIFIER: RN101388130; LOCATION: Mathis, San Patricio County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM and HAA5; PENALTY: $1,290; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(29) COMPANY: Millennium Petrochemicals Inc.; DOCKET NUMBER: 2005-1303-AIR-E; IDENTIFIER: RN100224450; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 40 CFR §60.18(c)(2) and THSC, §382.085(b), by failing to maintain a pilot light on the acetic acid flare; and 30 TAC §116.115(c), Air Quality Permit Number 5040, and THSC, §382.085(b), by failing to prevent unauthorized emissions of 25,180 pounds of carbon monoxide from the acetic acid flare; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: City of Moody; DOCKET NUMBER: 2005-1019-PWS-E; IDENTIFIER: RN102678406; LOCATION: Moody, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2), (m)(1), and (t), by failing to maintain water works operation and maintenance records and make them available for review, by failing to inspect the 250,000 gallon ground storage tank and the elevated tank, and by failing to post a legible sign at well number two with the name of the water supply and an emergency contact phone number; 30 TAC §290.42(1), by failing to compile and maintain a facility operations manual for operator review and reference; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.44(d)(1) and (h)(1)(A), by failing to properly install air release devices in the distribution system and by failing to install a backflow prevention assembly or an air gap at all residences and establishments where an actual or potential contamination hazard exists; 30 TAC §290.39(j), by failing to notify the commission prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; and 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements or exceptions to the easement requirement for land within 150 feet of wells one and two; PENALTY: $924; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(31) COMPANY: Murphy Oil USA, Inc. dba Murphy USA 7126; DOCKET NUMBER: 2005-0892-PST-E; IDENTIFIER: RN104513569; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.226(a) and §115.246(1), (4), and (5), and THSC, §382.085(b), by failing to maintain a record of the dates on which gasoline was delivered to the facility; 30 TAC §115.242(3) and (9) and THSC, §382.085(b), by failing to maintain all components of the Stage II vapor recovery system (VRS) and by failing to post operating instructions on each gasoline dispensing pump equipped with a Stage II VRS; and 30 TAC §334.7(c) and §334.8(c)(4)(B) and (5)(C), and the Code, §26.346(a), by failing to ensure that the UST registration and self-certification form is fully and accurately completed and submitted, by failing to make available to a common carrier a valid, current delivery certificate, and by failing to tag, label, or mark the UST fill tubes with UST identification numbers; PENALTY: $9,720; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(32) COMPANY: New Horizons Ranch and Center, Inc.; DOCKET NUMBER: 2004-1750-PWS-E; IDENTIFIER: Public Water Supply Number 1670009, RN101278471; LOCATION: Goldthwaite, Mills County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(6)(A) and (s)(1), by failing to employ at least one operator who possesses a valid Class B or higher water operator license and by failing to calibrate all flow measuring devices and rate-of-flow controllers; PENALTY: $626; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(33) COMPANY: Pete Gallegos Paving, Inc.; DOCKET NUMBER: 2005-1454-MSW-E; IDENTIFIER: RN104651831; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: dump trucking service; RULE VIOLATED: 30 TAC §330.5(a) and §330.32(b), by allegedly having transported and disposed of municipal solid waste at the site; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(34) COMPANY: City of Port Lavaca; DOCKET NUMBER: 2004-1458-PWS-E; IDENTIFIER: RN103098992; LOCATION: Port Lavaca, Calhoun County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(b)(2) and (c)(1) and (3), by exceeding the MCL for coliform, by failing to take the proper number of bacteriological samples, and by failing to take the proper number of repeat samples following a coliform positive result; PENALTY: $3,725; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(35) COMPANY: Ramos Industries, Inc.; DOCKET NUMBER: 2005-1252-AIR-E; IDENTIFIER: RN102820859; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: soil stabilization plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain authorization prior to operating a soil stabilization plant; and 30 TAC §205.6 and the Code, §5.702, by failing to pay outstanding general permit stormwater fees; PENALTY: $2,520; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(36) COMPANY: Forrest A. Dillon dba Reliable Wastewater Management; DOCKET NUMBER: 2005-1612-SLG-E; IDENTIFIER: RN102755105; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: sludge transportation; RULE VIO-

LATED: 30 TAC §312.142(a) and (d), by failing to apply for a sludge transporter registration; PENALTY: $600; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(37) COMPANY: David Joseph Sorrell; DOCKET NUMBER: 2005-0443-MWD-E; IDENTIFIER: RN101520013; LOCATION: Alba, Wood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 14171001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for TSS, five-day biochemical oxygen demand, dissolved oxygen, and pH and by failing to report the annual sewage sludge discharge monitoring reports; PENALTY: $7,400; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(38) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2005-1150-AIR-E; IDENTIFIER: RN100524008; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §115.783(5) and §116.115(c), Permit Number 3126A, and THSC, §382.085(b), by failing to construct so that no valves shall be installed or operated at the end of a pipe or line containing highly-active volatile organic compounds; and 30 TAC §§115.355(1), 115.781(b), and 116.115(c), Permit Number 3126A, and THSC, §382.085(b), by failing to monitor accessible valves by leak-checking for fugitive emissions; PENALTY: $10,200; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(39) COMPANY: Sunray Minimart #2, Inc. dba Otal All Seasons Food Store; DOCKET NUMBER: 2005-1048-PST-E; IDENTIFIER: RN104527031; LOCATION: Humble, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.244(1) and THSC, §382.085(b), by failing to conduct daily inspections for the Stage II VRS; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to provide proper overfill prevention equipment; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a proper release detection method; and 30 TAC §334.10(b), by failing to make available for agency personnel legible copies of all required records for inspection upon request; PENALTY: $4,480; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Sweetwater Ready-Mix Concrete Company; DOCKET NUMBER: 2005-1723-AIR-E; IDENTIFIER: RN101465540; LOCATION: Snyder, Scurry County, Texas; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to the construction and operation of a flyash silo; PENALTY: $1,472; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(41) COMPANY: Texas Sand & Gravel Company, Inc.; DOCKET NUMBER: 2005-1253-AIR-E; IDENTIFIER: RN104556030; LOCATION: Vega, Oldham County, Texas; TYPE OF FACILITY: rock crusher; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit to construct and operate a rock crusher; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(42) COMPANY: The Premcor Refining Group Inc.; DOCKET NUMBER: 2005-0585-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 6825A and PSD-TX-49, and THSC, §382.085(b), by failing to comply with the emissions limits stated in the maximum allowable emissions rate table; and 30 TAC §101.201(b)(7) and (8) and THSC, §382.085(b), by failing to identify the compound descriptive type of all individually listed compounds or mixtures of air contaminants; PENALTY: $6,020; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(43) COMPANY: The Sabine Mining Company; DOCKET NUMBER: 2005-1527-PWS-E; IDENTIFIER: RN101256451; LOCATION: Hallsville, Harrison County, Texas; TYPE OF FACILITY: lignite mining; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: $313; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(44) COMPANY: John Keith Wright dba Trackside Grocery; DOCKET NUMBER: 2005-1512-PST-E; IDENTIFIER: RN102425014; LOCATION: Magnolia, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,520; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(45) COMPANY: Tyler Holding Company, Inc.; DOCKET NUMBER: 2005-1354-AIR-E; IDENTIFIER: RN100222512; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Numbers 4902 and 5955, and THSC, §382.085(b), by failing to comply with permitted emission limits; 30 TAC §101.201(a) and (b) and THSC, §382.085(b), by failing to properly report the incidents associated with the January 18, 2005, emissions event; 30 TAC §122.145(2)(B) and §122.165(a)(7) and THSC, §382.085(b), by failing to submit a deviation report; 30 TAC §122.143(4), Air Permit Number O-01257, and THSC, §382.085(b), by failing to maintain records documenting quarterly opacity observations; 30 TAC §101.20(1) and §122.143(4), Air Permit Number O-01257, 40 CFR §60.105(a)(4), and THSC, §382.085(b), by failing to install an instrument for continuously monitoring and recording the concentration of hydrogen sulfide in fuel gases before being burned; 30 TAC §116.115(c) and §122.143(4), Air Permit Numbers 5955A, 21104, and O-01257, and THSC, §382.085(b), by failing to maintain sulfur production below the maximum limit of 16.6 long tons per day, by failing to maintain records demonstrating the date, time, and specific repairs made for leaks that were discovered during olfactory, visual, and audible leak checks, and by failing to maintain nitrogen oxide emissions; 30 TAC §101.20(1) and §122.143(4), Air Permit Number O-01257, 40 CFR §60.113b(b)(2), (3), and (5), and THSC, §382.085(b), by failing to notify the administrator in writing 30 days in advance of conducting seal gap measurements, by failing to submit a report to the administrator within 60 days after conducting seal gap measurements, and by failing to maintain records of the calculations used to determine the seal gap size; 30 TAC §§101.20(1), 113.340, and 122.143(4), Air Permit Number O-01257, 40 CFR §§60.107(b)(1)(i) and (iii), 60.482-5(a), 60.482-6(a)(1), 60.482-7(a), 60.486(c)(1) and (5), and (e)(2)(ii),

60.487(c)(2)(vii) and (c)(4), 61.349(f), 61.356(e)(1) and (f)(1), 61.357(d)(2) and (8), 63.11(b)(5), 63.119(b)(1) and (c), 63.120(a)(5) and (b)(1)(iii), 63.646(a), 63.648(a), and THSC, §382.085(b), by failing to maintain complete quality control records, by failing to notify the administrator in writing 30 days prior to refilling an empty storage vessel, by failing to perform seal gap measurements of external floating roof vessels equipped with primary and secondary seals, by failing to include in the semiannual reports facts that explain each delay of repair, and where appropriate, why a process unit shutdown was technically infeasible, and changes to components that have occurred since the submission of previous semiannual reports, by failing to include with each off-site shipment a notice stating that the waste contains benzene, by failing to submit an annual benzene report that includes the total benzene quantity, by failing to include in the annual report a summary of all inspections, by failing to maintain a signed and dated certification that closed-vent systems, control devices, and treatment process units in benzene waste operations are designed to operate at the documented performance levels, by failing to visually inspect on a quarterly basis each closed-vent system and control device, by failing to equip each sampling system connection with a closed-purge, closed-loop, or closed-vent system, by failing to equip open-ended lines with a cap, blind flange, plus, or second valve, by failing to maintain a complete log of information relating to the detection of leaks, by failing to include all required information on the list of identification numbers for equipment that has been designated as having no detectable emissions, by failing to monitor valves monthly, by failing to operate a flare with a flame present at all times, and by failing to maintain an internal or external floating roof resting on the liquid surface at all times; 30 TAC §116.110(a) and THSC, §382.085(b), by failing to obtain authorization for construction and operation; and 30 TAC §§101.10(b)(1), 113.340, and 122.143(4), Air Permit Number O-01257, 40 CFR §60.482-1(a) and §63.648(a), and THSC, §382.085(b), by failing to submit an emissions inventory report that includes the amount of emissions not identified in previous inventories and by failing to demonstrate compliance with the standards of performance; PENALTY: $263,817; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(46) COMPANY: United States Department of Agriculture, Animal and Plant Health Inspection Service; DOCKET NUMBER: 2005-1262-PWS-E; IDENTIFIER: RN101611804; LOCATION: near Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and HAA5; and 30 TAC §303.73 and the Code, §5.702, by failing to pay overdue Rio Grande watermaster operation fees; PENALTY: $655; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(47) COMPANY: Western Cabinets, Inc.; DOCKET NUMBER: 2005-1306-AIR-E; IDENTIFIER: RN102302007; LOCATION: Cedar Hill, Dallas County, Texas; TYPE OF FACILITY: mill shop which manufactures wood kitchen cabinets; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 27543, and THSC, §382.085(b), by failing to maintain a monthly report that represents the emissions of hazardous air pollutants and by failing to use filters that achieve at least a 95% particulate matter removal efficiency; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(48) COMPANY: Willtex Stores, L.P. dba Big's 301 and Big's 302; DOCKET NUMBER: 2005-1486-PST-E; IDENTIFIER: RN101906465 and RN102272697; LOCATION: Cotulla, La Salle County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and (B)(ii), and the Code, §26.3467(a), by failing to timely renew a previously issued UST delivery certificate and by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(49) COMPANY: Wright Materials, Inc.; DOCKET NUMBER: 2004-1400-AIR-E; IDENTIFIER: RN101524197; LOCATION: near Realitos, Duval County, Texas; TYPE OF FACILITY: rock crushing; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to constructing and operating a rock crusher; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(50) COMPANY: Fernando Munoz, Jr. dba Zapata Ready Mix, Inc.; DOCKET NUMBER: 2005-1124-AIR-E; IDENTIFIER: RN102931938; LOCATION: Zapata, Zapata County, Texas; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §106.201(4) and (6), Permit By Rule Registration (PBR) Number 42606, and THSC, §382.085(b), by failing to operate per the requirements of PBR Number 42606 and by failing to control dust emissions from the cement weigh hopper and batch drop point; and 30 TAC §106.6(b), PBR Number 42606, and THSC, §382.085(b), by failing to operate within the operating procedures and construction plans for which the facility was constructed; PENALTY: $2,328; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200505610
Stephanie Bergeron Perdue
Acting Deputy, Office of Legal Services
Texas Commission on Environmental Quality
Filed: December 6, 2005

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Eric Tiblier PA	L05951	Austin	00	11/17/05
Denton	Denton Cancer Center LLP	L05945	Denton	00	11/24/05
McKinney	Texas Institute of Cardiology PA	L05953	McKinney	00	11/29/05
Webster	Cardiovascular Clinic	L05949	Webster	00	11/18/05
Throughout Tx	OKM Engineering Inc	L05946	Dallas	00	11/23/05
Throughout Tx	QC Laboratories Inc	L05956	Houston	00	11/22/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Allen	Presbyterian Medical Center DBA Presbyterian Hospital of Allen	L05765	Allen	03	11/22/05
Amarillo	Baptist St Anthony's Health System	L01259	Amarillo	78	11/16/05
Andrews	Waste Control Specialist LLC	L04971	Andrews	38	11/28/05
Arlington	Metroplex Hematology/Oncology Associates DBA Arlington Cancer Center	L03211	Arlington	74	11/22/05
Austin	Daughters of Charity Hlth Services of Austin DBA Seton Healthcare Network	L02896	Austin	86	11/17/05
Bay City	Equistar Chemicals LP Matagorda Plant	L03938	Bay City	18	11/29/05
Baytown	Bayer Materials Science LLC	L01577	Baytown	60	11/30/05
Baytown	Chevron Phillips Chemical Company LP	L00962	Baytown	35	11/29/05
Baytown	Exxonmobil Chemical Company	L01135	Baytown	64	11/29/05
Baytown	Exxonmobil Refining & Supply Company	L01134	Baytown	58	11/23/05
Beaumont	BASF Corporation	L02016	Beaumont	24	11/29/05
Beaumont	Christus Health Southeast Texas DBA Christus Hospital – St. Elizabeth	L00269	Beaumont	102	11/16/05
Beaumont	E I Dupont De Nemours & Co Inc	L00517	Beaumont	71	11/23/05
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	70	11/23/05
Beaumont	Exxonmobil Chemical Company	L02316	Beaumont	32	11/22/05
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary LP DBA North Hills Outpatient Imaging Center	L03455	Bedford	40	11/21/05
Big Spring	Alon USA LP	L04950	Big Spring	06	11/28/05
Bishop	Ticona Polymers Inc	L02441	Bishop	42	11/30/05
Bonham	Attentus Bonham LP DBA Northeast Medical Center	L03331	Bonham	27	11/28/05
Bryan	Texas Municipal Power Agency Gibbons Creek Steam Electric	L02913	Bryan	18	11/30/05
Carrollton	Tenet Health System Hospitals Dallas Inc DBA Trinity Medical Center	L03765	Carrollton	47	11/17/05
Cedar Creek	Biocrest Manufacturing LP	L05214	Cedar Creek	04	11/29/05
Channelview	Equistar Chemicals LP	L00064	Channelview	40	11/22/05
Cleburne	Johns Manville International Inc	L01482	Cleburne	16	11/29/05
Clifton	Goodall Witcher Healthcare Foundation	L03427	Clifton	13	11/23/05
Corpus Christi	Citgo Refining and Chemicals	L00243	Corpus Christi	35	11/22/05
Corpus Christi	Equistar Chemicals LP Corpus Christi Plant	L02447	Corpus Christi	15	11/29/05
Corpus Christi	Flint Hills Resources LP	L00322	Corpus Christi	36	11/23/05

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Corpus Christi	Sherwin Alumina Company	L00200	Corpus Christi	42	11/23/05
Corpus Christi	Valero Refining - Texas LP	L03360	Corpus Christi	21	11/30/05
Dallas	Baylor Radiosurgery Center DBA Baylor University Medical Center	L05842	Dallas	03	11/16/05
Dallas	Baylor Radiosurgery Center DBA Baylor University Medical Center	L05842	Dallas	04	11/21/05
Dallas	Cardiac Associates of Dallas	L05793	Dallas	02	11/21/05
Dallas	Medical Service/Dallas Nephrology Assoc. DBA Dallas Nephrology Associates	L02604	Dallas	23	11/28/05
Dallas	Medi Physics Inc DBA GE Healthcare	L05529	Dallas	15	11/16/05
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	02	11/23/05
Deer Park	Akzo Nobel Polymer Chemicals LLC	L04372	Deer Park	10	11/29/05
Deer Park	Equistar Chemicals LP	L00204	Deer Park	59	11/23/05
Deer Park	Shell Chemical LP	L04933	Deer Park	15	11/28/05
Deer Park	Shell Oil Products US DBA Deer Park Refining LP	L04554	Deer Park	20	11/28/05
Deer Park	Total Petrochemicals USA Inc	L00302	Deer Park	47	11/23/05
El Paso	Providence Memorial Hospital	L02353	El Paso	86	11/29/05
El Paso	Tenet Hospitals Limited DBA Sierra Medical Center	L02365	El Paso	57	11/28/05
Electra	Electra Memorial Hospital	L03227	Electra	12	11/18/05
Freeport	BASF Corporation	L01021	Freeport	48	11/30/05
Freeport	Huntsman Ethyleneamines LTD	L05457	Freeport	04	11/28/05
Fort Worth	Baylor All Saints Medical Center	L02212	Fort Worth	69	11/29/05
Houston	Abitibi Consolidated Inc DBA Abitibi Consolidated	L01793	Houston	28	11/29/05
Houston	American Diagnostic Tech LLC	L05514	Houston	20	11/17/05
Houston	Baylor College of Medicine	L00680	Houston	88	11/17/05
Houston	CHCA Woman's Hospital LP DBA The Women's Hospital of Texas	L04834	Houston	11	11/16/05
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	53	11/23/05
Houston	Doctors Hospital 1997 LP DBA Doctors Hospital Parkway	L01964	Houston	45	11/21/05
Houston	Doctors Hospital LP DBA Doctors Hospital Tidwell	L02047	Houston	27	11/17/05
Houston	Goodyear Tire & Rubber Company	L00264	Houston	26	11/23/05
Houston	Houston Northwest Medical Center	L02253	Houston	64	11/18/05
Houston	Institute of Biosciences and Technology	L04681	Houston	21	11/17/05
Houston	Lyondell-Citgo Refining LP	L00187	Houston	57	11/23/05
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	107	11/28/05
Houston	Methodist Health Centers DBA Methodist Willowbrook Hospital	L05472	Houston	18	11/23/05
Houston	Nuclear Imaging Services LLC	L05775	Houston	12	11/16/05
Houston	Red Oak Cardiovascular Center	L04159	Houston	12	11/17/05
Houston	Sayed Feghali Cardiology Association	L05403	Houston	01	11/16/05
Houston	Spectracell Laboratories Inc	L04617	Houston	09	11/21/05
Houston	Stork Southwestern Laboratories Inc	L00299	Houston	124	11/21/05
Irving	Baylor Medical Center at Irving DBA Irving Healthcare System	L02444	Irving	59	11/17/05
Jourdanton	San Miguel Electric Cooperative	L02347	Jourdanton	23	11/22/05
Kerrville	Sid Peterson Memorial Hospital	L01722	Kerrville	32	11/28/05

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Kilgore	Laird Memorial Hospital DBA Laird Memorial Hospital	L03496	Kilgore	21	11/21/05
La Porte	Dow Chemical Company USA Houston Operations	L00510	La Porte	65	11/23/05
La Porte	Innovene USA LLC DBA Innovene Polyethylene North America	L00088	La Porte	53	11/23/05
La Porte	Sunco Inc (R&M)	L02778	La Porte	17	11/30/05
La Porte	Total Petrochemicals USA Inc	L04640	La Porte	14	11/29/05
Lancaster	Medical Center at Lancaster	L03342	Lancaster	23	11/22/05
Laredo	Laredo Cardiovascular Consultants DBA Laredo Cardiovascular Consultants PA	L04687	Laredo	09	11/30/05
Longview	Eastman Chemicals Company Tx Operations	L00301	Longview	101	11/23/05
Marble Falls	Marble Falls Imaging Center LP DBA Marble Falls Imaging Center	L05301	Marble Falls	07	11/28/05
Midlothian	Chaparral Steel Midlothian LP	L02015	Midlothian	29	11/29/05
Mont Belvieu	Exxonmobil Chemical	L03119	Mont Belvieu	24	11/30/05
New Braunfels	Cancer Care Network of South Texas PA	L05717	New Braunfels	06	11/18/05
Odessa	Huntsman Polymers Corporation	L00547	Odessa	39	11/23/05
Orange	Chevron Phillips Chemical Company LP	L00031	Orange	54	11/22/05
Orange	E I Dupont De Nemours & Co Sabine River Works	L00005	Orange	68	11/22/05
Orange	Lanxess Corporation	L00976	Orange	52	11/29/05
Orange	Solvay Soexis Inc	L03968	Orange	15	11/30/05
Orange	Tin Inc DBA Temple Inland	L01029	Orange	52	11/30/05
Pasadena	Air Products Manufacturing Corporation	L04560	Pasadena	11	11/29/05
Pasadena	Albemarle Corporation	L04072	Pasadena	15	11/29/05
Pasadena	Basell USA Inc	L01854	Pasadena	32	11/29/05
Pasadena	Celanese LTD Clear Lake Plant	L01130	Pasadena	62	11/23/05
Pasadena	Chevron Phillips Chemical Company LP	L00230	Pasadena	75	11/22/05
Pasadena	Ethyl Corporation	L05094	Pasadena	03	11/28/05
Pasadena	Goodyear Tire & Rubber Company	L04321	Pasadena	07	11/29/05
Pasadena	Marathon Ashland Pipe line LLC	L05303	Pasadena	03	11/28/05
Pasadena	Syngenta Crop Protection Inc	L02216	Pasadena	27	11/30/05
Pasadena	The Dow Chemical Company Clear Lake Operations	L05829	Pasadena	02	11/28/05
Point Comfort	Alcoa World Alumina Atlantic Point Comfort Operations	L05186	Point Comfort	04	11/30/05
Point Comfort	Formosa Plastics Corporation	L03893	Point Comfort	31	11/29/05
Port Arthur	Christus Health Southeast Texas DBA Christus Hospital St Mary	L01212	Port Arthur	87	11/29/05
Port Arthur	Huntsman Corporation	L04067	Port Arthur	17	11/30/05
Port Arthur	Motiva Enterprises LLC	L05211	Port Arthur	06	11/28/05
Port Arthur	The Premcor Refining Group Inc Port Arthur Refinery	L04871	Port Arthur	09	11/28/05
Port Lavaca	Seadrift Coke LP	L03432	Port Lavaca	20	11/30/05
Port Lavaca	Union Carbide Corporation A Subsidiary of The Dow Chemical Company	L00051	Port Lavaca	83	11/22/05
Rockdale	Alcoa Power Plant / Sandow Station	L04386	Rockdale	13	11/29/05
Rockdale	TXU Generation Co LP DBA TXU Power	L04075	Rockdale	08	11/29/05
San Antonio	Christus Santa Rosa Surgery Center LLP DBA Christus Santa Rosa Surgery Center	L05805	San Antonio	02	11/30/05
San Antonio	City Public Service	L02876	San Antonio	18	11/30/05

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	The University of Texas Health Science Center At San Antonio	L01279	San Antonio	10	11/29/05
San Antonio	University of Texas at San Antonio Environmental Health, Safety	L01962	San Antonio	54	11/15/05
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	48	11/18/05
Sherman	Texas Oncology PA DBA North Texas Pet Imaging	L05502	Sherman	08	11/30/05
Sherman	Texas Oncology PA DBA Texas Cancer Center Sherman	L05019	Sherman	11	11/16/05
Silsbee	Meadwestvaco Texas LLP	L01095	Silsbee	51	11/30/05
Tatum	TXU Power Martin Lake Plant	L04593	Tatum	09	11/30/05
Temple	Texas A&M University System Health Science Center	L05494	Temple	07	11/23/05
Texarkana	International Paper Company	L01686	Texarkana	28	11/29/05
Texarkana	Wadley Regional Medical Center	L02486	Texarkana	43	11/29/05
Texas City	BP Products North America Inc	L00254	Texas City	57	11/22/05
Texas City	Innovene USA LLC	L00354	Texas City	32	11/23/05
Texas City	Union Carbide Corporation	L00495	Texas City	52	11/23/05
Texas City	Valero Refining Company	L02578	Texas City	29	11/30/05
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	44	11/29/05
Three Rivers	Diamond Shamrock Refining Company LP	L03699	Three Rivers	15	11/29/05
Tyler	Delek Refining LTD	L02289	Tyler	14	11/22/05
Tyler	East Texas Medical Center	L00977	Tyler	125	11/16/05
Tyler	East Texas Medical Center	L00977	Tyler	126	11/17/05
Tyler	Nutech Inc	L04274	Tyler	53	11/17/05
Wichita Falls	Saint-Gobain Vetrotex America Inc	L02269	Wichita Falls	32	11/22/05
Throughout Tx	ECS-Texas LLP	L05384	Addison	03	11/29/05
Throughout Tx	Solutia Inc	L00219	Alvin	73	11/23/05
Throughout Tx	Team Cooperheat-MQS Inc DBA Cooperheat-MQS	L00087	Alvin	132	11/28/05
Throughout Tx	John E Hearne DBA Hearne Wireline Service	L05174	Asherton	03	11/22/05
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	92	11/22/05
Throughout Tx	Minnesota Mining & Manufacturing Co. Traffic Control Materials Division	L00918	Brownwood	36	11/23/05
Throughout Tx	NDE Solutions LLC	L05879	Bryan	05	11/23/05
Throughout Tx	Apex Inspections Inc	L05563	Carrollton	04	11/21/05
Throughout Tx	Texas A&M University Environmental Health & Safety	L00448	College Station	125	11/30/05
Throughout Tx	Rone Engineering Services LTD	L02356	Dallas	29	11/17/05
Throughout Tx	H & H X-Ray Services Inc	L02516	Flint	55	11/22/05
Throughout Tx	Aitec USA Inc	L05718	Houston	14	11/22/05
Throughout Tx	Aitec USA Inc	L05718	Houston	15	11/29/05
Throughout Tx	Nuclear Imaging Services LLC	L05775	Houston	13	11/18/05
Throughout Tx	Professional Service Industries Inc	L00203	Houston	116	11/10/05
Throughout Tx	Wood Group Logging Services Inc	L05262	Houston	16	11/21/05
Throughout Tx	Big State X-Ray	L02693	Odessa	46	11/22/05
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	99	11/28/05
Throughout Tx	Isbell Engineering Group Inc	L05355	Sanger	11	11/16/05
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugar Land	91	11/14/05
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugar Land	92	11/23/05
Throughout Tx	Innovene USA LLC	L00354	Texas City	33	11/29/05
Throughout Tx	BJ Services Company USA	L02684	Tomball	49	11/22/05

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	H & H X-Ray Services Inc	L02516	Tyler	54	11/15/05
Throughout Tx	Invista Sarl	L00386	Victoria	77	11/18/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
El Paso	El Paso Heart Center	L04828	El Paso	15	11/16/05
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	20	11/28/05
Throughout Tx	A L Helmcamp Inc	L05171	Buffalo	03	11/17/05

TERMINATION OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Granbury	Terra Analytics Laboratory	L04714	Granbury	04	11/22/05
Pasadena	Pasadena Paper Company	L00906	Pasadena	41	11/23/05
Pasadena	Pet Scans of America Corp DBA Bayshore Medical Center	L05406	Pasadena	05	11/15/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200505634
Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 7, 2005

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Columbia HCA, dba Spring Branch Medical Center

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Columbia HCA, dba Spring Branch Medical Center (Registrant #R03807-001) of Crockett. A total penalty of $12,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505603
Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 5, 2005

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Healthsouth Diagnostic Center of Coppell

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Healthsouth Diagnostic Center of Coppell (Mammography #M00639-000) of Coppell. A total penalty of $20,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505633

Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 7, 2005

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Johnny McElroy, dba McElroy Dental Services

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Johnny McElroy, dba McElroy Dental Services (Registrant #R23063-000) of Abilene. A total penalty of $8,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505604
Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 5, 2005

♦ ♦ ♦

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Nova Healthcare Management, LLP

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Nova Healthcare Management, LLP (Registrant #R20310-010) of Houston. A total penalty of $8,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505605
Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 5, 2005

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Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by CARE IMPROVEMENT PLUS OF TEXAS INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in San Antonio, Texas

Application to change the name of GERLING GLOBAL REINSURANCE CORPORATION OF AMERICA to GLOBAL REINSURANCE CORPORATION OF AMERICA, a foreign fire and/or casualty company. The home office is in New York, New York.

Application for admission to the State of Texas by TOWER NATIONAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Boston, Massachusetts.

Application to change the name of TRIGON HEALTH AND LIFE INSURANCE COMPANY to HM HEALTH INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Pittsburgh, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200505640
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 7, 2005

♦ ♦ ♦

Third Party Administrator Applications

The following third party administrator applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of ADAPTIS, INC., a foreign third party administrator. The home office is SEATTLE, WASHINGTON.

Application for admission to Texas of ARTHUR J. GALLAGHER RISK MANAGEMENT SERVICES, INC., a foreign third party administrator. The home office is ITASCA, ILLINOIS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200505564
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 1, 2005

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of RGA Technology Partners, Inc., a foreign third party administrator. The home office is CHESTERFIELD, MISSOURI.

Application for admission to Texas of ONLINE INSURANCE SERVICES, INC., a foreign third party administrator. The home office is ORANGE PARK, FLORIDA.

Any objections must be filed within 20 days after this notice is published in the Texas Register, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200505632
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 7, 2005

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Texas Lottery Commission

Instant Game Number 620 "Gold Fever"

1.0 Name and Style of Game.

A. The name of Instant Game No. 620 is "GOLD FEVER". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 620 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 620.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, GOLD BAR SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500, and $2,000.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 620 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
GOLD BAR	DBL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$2,000	TWO THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 620 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅ which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize- A prize of $2,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (620), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 620-0000001-001.

L. Pack - A pack of "GOLD FEVER" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page, tickets 006 to 010 on the next page, etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GOLD FEVER" Instant Game No. 620 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GOLD FEVER" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of Your Numbers play symbols to the Winning Number play symbol, the player wins prize shown for that number. If a player reveals a Gold Bar play symbol, the player wins double the prize shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers prize symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. The doubler symbol will only appear on intended winning tickets as dictated by the prize structure.

E. Non-winning prize symbols will never be the same as the winning prize symbol(s).

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e., 5 and $5).

G. The doubler symbol will never appear more than once on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "GOLD FEVER" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GOLD FEVER" Instant Game prize of $2,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GOLD FEVER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "GOLD FEVER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "GOLD FEVER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 13,200,000 tickets in the Instant Game No. 620. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 620 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,531,200	8.62
$2	792,000	16.67
$4	158,400	83.33
$5	105,600	125.00
$10	79,200	166.67
$20	79,200	166.67
$50	13,200	1,000.00
$100	4,950	2,666.67
$500	44	300,000.00
$2,000	44	300,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.78. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 620 without advance notice; at which point, no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 620, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200505597
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 5, 2005

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Instant Game Number 627 "Grand Hand"

1.0 Name and Style of Game.

A. The name of Instant Game No. 627 is "GRAND HAND". The play style is "beat score with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 627 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 627.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: A, K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2, 16, 17, 18, 19, 20, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $1,000, and $75,000.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 627 - 1.2D

PLAY SYMBOL	CAPTION
A	ACE
K	KNG
Q	QUN
J	JCK
10	TEN
9	NIN
8	EGT
7	SVN
6	SIX
5	FIV
4	FOR
3	THR
2	TWO
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$75,000	75 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 627 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize- A prize of $1,000, $5,000 or $75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (627), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 627-0000001-001.

L. Pack - A pack of "GRAND HAND" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GRAND HAND" Instant Game No. 627 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GRAND HAND" Instant Game is determined once the latex on the ticket is scratched off to expose 46 (forty-six) Play Symbols. The player adds the cards in each HAND. If the total of any HAND beats the DEALER'S TOTAL, win the prize shown for that hand. If the total of any HAND equals 21, win DOUBLE the prize shown for that hand. Each hand is played separately. A=11 and J, Q, K =10. No portion of the display printing or any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 46 (forty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 46 (forty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 46 (forty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No three or more like non-winning prize symbols on a ticket.

C. Each YOUR HAND play symbol will be approximately evenly distributed among the possible locations.

D. No duplicate non-winning YOUR HANDS on a ticket (in the same order).

E. No ties between any YOUR HANDS total and the DEALER'S TOTAL.

F. No YOUR HANDS will total less than 12 (twelve).

G. No YOUR HANDS will contain two Ace play symbols.

H. A YOUR HAND which totals 21 (doubler) will only appear once on a ticket and only as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "GRAND HAND" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GRAND HAND" Instant Game prize of $1,000, $5,000 or $75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GRAND HAND" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "GRAND

HAND" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "GRAND HAND" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 627. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 627 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	907,200	5.56
$10	235,200	21.43
$15	168,000	30.00
$20	117,600	42.86
$50	67,200	75.00
$100	11,592	434.78
$500	504	10,000.00
$1,000	36	140,000.00
$5,000	9	560,000.00
$75,000	7	720,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.34. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 627 without advance notice; at which point, no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 627, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 5, 2005

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Instant Game Number 639 "Diamond Dazzler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 639 is "DIAMOND DAZZLER". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 639 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 639.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: SEVEN SYMBOL, CROWN SYMBOL, HORSE SHOE SYMBOL, LEMON SYMBOL, BANANA SYMBOL, POT OF GOLD SYMBOL, MELON SYMBOL, CHERRY SYMBOL, BAR SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $100, $200, and $2,500.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 639 - 1.2D

PLAY SYMBOL	CAPTION
SEVEN SYMBOL	SEVN
CROWN SYMBOL	CRWN
HORSE SHOE SYMBOL	SHOE
LEMON SYMBOL	LEMN
BANANA SYMBOL	BNNA
POT OF GOLD SYMBOL	GOLD
MELON SYMBOL	MELN
CHERRY SYMBOL	CHRY
BAR SYMBOL	BAR
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$200	TWO HUND
$2,500	25 HUND

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 639 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $40.00 or $200.

I. High-Tier Prize - A prize of $2,500.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (639), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 639-0000001-001.

L. Pack - A pack of "DIAMOND DAZZLER" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed. Please note the books will be in a A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DIAMOND DAZZLER" Instant Game No. 639 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DIAMOND DAZZLER" Instant Game is determined once the latex on the ticket is scratched off to expose 16 (sixteen) Play Symbols. If the player reveals 3 matching symbols within a game, the player wins the prize shown for that game. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 16 (sixteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 16 (sixteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 16 (sixteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 16 (sixteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate games on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. No occurrence of 3 matching play symbols in a vertical column.

2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMOND DAZZLER" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DIAMOND DAZZLER" Instant Game prize of $2,500 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DIAMOND DAZZLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "DIAMOND DAZZLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "DIAMOND DAZZLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 639. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 639 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,344,000	8.93
$2	768,000	15.63
$4	144,000	83.33
$5	144,000	83.33
$10	96,000	125.00
$20	48,000	250.00
$40	7,250	1,655.77
$200	2,150	5,581.40
$2,500	150	80,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 639 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 639, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200505627
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 7, 2005

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Instant Game Number 690 "Match 3"

1.0 Name and Style of Game.

A. The name of Instant Game No. 690 is "MATCH 3". The play style is "match 3 of 9 with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 690 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 690.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $3.00, $6.00, $9.00, $18.00, $27.00, $100, $333, $999 and 3X.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 690 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$6.00	SIX$
$9.00	NINE$
$18.00	EGHTN
$27.00	TWY SVN
$100	ONE HUND
$333	3 HUND 33
$999	9 HUND 99
3X	TRIPLER

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 690 - 1.2E

CODE	PRIZE
ONE	$1.00
THR	$3.00
SIX	$6.00
NIN	$9.00
EHT	$18.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $3.00, $6.00, $9.00 or $18.00.

H. Mid-Tier Prize - A prize of $27.00, $100, $300 or $333.

I. High-Tier Prize - A prize of $999.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (690), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 690-0000001-001.

L. Pack - A pack of "MATCH 3" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed. Please note the books will be in a A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MATCH 3" Instant Game No. 690 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MATCH 3" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If the player reveals 3 matching dollar amounts, the player wins that

dollar amount. If the player reveals 2 matching dollar amounts and a "3X" symbol, the player wins TRIPLE the dollar amount shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 9 (nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No four or more of a kind on a ticket.

C. No three or more of a kind on a ticket where the tripler symbol appears.

D. No more than one pair on a ticket where the tripler symbol appears.

E. The tripler symbol will only appear on intended winning tickets as dictated by the prize structure.

F. The tripler symbol will never appear more than once on a ticket.

G. There will be no 3 or more pairs on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "MATCH 3" Instant Game prize of $1.00, $3.00, $6.00, $9.00, $18.00, $27.00, $100, $300 or $333, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $27.00, $100, $300 or $333 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MATCH 3" Instant Game prize of $999, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MATCH 3" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated

by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MATCH 3" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MATCH 3" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 690. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 690 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,440,000	8.33
$3	768,000	15.63
$6	96,000	125.00
$9	96,000	125.00
$18	48,000	250.00
$27	11,000	1,090.91
$100	2,550	4,705.88
$300	1,250	9,600.00
$333	600	20,000.00
$999	24	500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 690 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 690, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200505628
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 7, 2005

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North Central Texas Council of Governments

Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) developed an Air Quality Public Education and Information Program to promote transportation-related clean air strategies and activities in the Dallas-Fort Worth (DFW) nine-county nonattainment area (including Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) through a community awareness campaign. This Request for Proposals (RFP) is for an entity to manage the operations and activities of a business community awareness campaign, conduct a business oriented pilot program, and to perform outreach to the North Texas business community. The consultant will work with NCTCOG staff on the needs for any creative materials and media relations for the business community awareness campaign. A separate RFP will be issued for an entity to be the public relations firm for the Air Quality Public Education and Information Program, including the development of creative materials and conducting media relations for a general public community awareness campaign, as well as any creative materials or media relations needed for the business community awareness campaign. The consultant's tasks for this Air Quality Public Education and Information Program's business community awareness campaign, pilot program, and outreach are scheduled to be completed by December 31, 2006, however the majority of the work is expected to take place during Ozone Season, which is May 1st - October 31st.

Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time on Friday, January 20, 2006, to Chris Klaus, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally As-

sisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200505642
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: December 7, 2005

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Public Utility Commission of Texas

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 30, 2005, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Plateau Telecommunications, Incorporated (TX RSA 3 Limited Partnership) for Designation as an Eligible Telecommunications Carrier. Docket Number 32087.

The Application: Plateau Telecommunications, Incorporated seeks ETC designation in the rural study areas identified as the E. Glenrio, Farwell, Pleasant Hill, Bula, Lariat, Lazbuddie, Lehman, Maple, Needmore, Bovina, Friona, Earth, Muleshoe, Olton, Springlake, and Sudan rate centers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 29, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32087.

TRD-200505588
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2005

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Notice of Application for Waiver from Requirements in P.U.C. Substantive Rule §26.54(b)

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 1, 2005 for waiver from the requirements in P.U.C. Substantive Rule §26.54(b)(3) and §26.54(b)(4)(C). A summary of the application follows.

Docket Title and Number: Application of Big Bend Telephone Company, Incorporated for an Extension of Waiver from Requirements in P.U.C. Substantive Rule §26.54(b)(3) and §26.54(b)(4)(C); Docket Number 32094.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735- 2989. All comments should reference Docket Number 32094.

TRD-200505607
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2005

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Notice of Application for Waiver from Requirements in P.U.C. Substantive Rule §26.54(b)(3)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 28, 2005 for waiver from the requirements in P.U.C. Substantive Rule §26.54(b)(3) relating to one-party line service and voice band data. A summary of the application follows.

Docket Title and Number: Application of Border to Border Communications, Incorporated for an Extension of Waiver from Requirements in P.U.C. Substantive Rule §26.54(b)(3); Docket Number 32080.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735- 2989. All comments should reference Docket Number 32080.

TRD-200505558
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 30, 2005

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Notice of Application to Relinquish a Service Provider Certificate or Operating Authority

On November 30, 2005, Symatec Communications filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60551. Applicant intends to relinquish its certificate.

The Application: Application of Symatec Communications to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 32085.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 21, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32085.

TRD-200505587
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2005

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Public Notice of Workshop and Request for Comments on Rulemaking to Modify Payphone Rules and to Address Access Line Charges to Comply with PURA §55.1735

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding the commission's payphone rules (P.U.C. Substantive Rule §§26.341-26.347) on Monday, January 9, 2006, at 10:00 a.m. in Hearing Room A, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31957, *Rulemaking to Modify Payphone Rules and to Address Access Line Charges to Comply with PURA §55.1735* has been established for this proceeding. Senate Bill 5 (SB 5) amended the Public Utility Regulatory Act (PURA) by adding §55.1735, which became effective on September 7, 2005. PURA §55.1735 provides that the charge imposed by a local exchange company for an access line used to provide pay telephone service may not exceed the amount of the charge the company imposes for an access line used for regular business purposes. In this rulemaking, the commission intends to amend the commission's payphone rules to comply with PURA §55.1735. The commission also intends to evaluate the need for other changes to the payphone rules. The commission requests that interested persons file comments on the following issues prior to the workshop:

1. Should the commission modify the rate table in P.U.C. Substantive Rule §26.346(b)(1)(F)? If so, please specify: (a) any proposed changes and (b) the reasons for those changes.

2. Does P.U.C. Substantive Rule §26.345 require any changes to ensure that payphone service providers maintain current information in the notices required to be attached to payphones? If so, please specify: (a) any proposed changes and (b) the reasons for those changes.

3. Do the payphone rules require any changes to address/account for current statutory requirements and industry practices? If so, please specify: (a) the relevant sections/subsections, (b) any proposed changes, and (c) the reasons for those changes.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326 no later than December 30, 2005. All responses should reference Project Number 31957. This notice is not a formal notice of proposed rulemaking; however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Questions concerning the workshop or this notice should be referred to Stephen Mendoza, Infrastructure Reliability Division, (512) 936-7394, or Andrew Kang, Legal Division, (512) 936-7293. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200505570
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 1, 2005

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Request for Comment Regarding Review and Evaluation of the Texas Universal Service Fund Pursuant to PURA §56.029

In preparation of the Review and Evaluation of the Texas Universal Service Fund (TUSF) pursuant to Public Utility Regulatory Act (PURA) §56.029, the Public Utility Commission of Texas (commission) submits the following request for comment to all interested parties in this proceeding. The commission requests that interested persons answer the following questions:

I. Retrospective Evaluation of the Fund

1. Does the fund accomplish its purposes as prescribed by PURA §56.021? In providing your response, please address each of the programs in PURA §56.021.

2. Does the fund accomplish its purposes as prescribed by the Order in Docket Number 18515 (the Texas High Cost Universal Service Plan (THCUSP), which determined large company support amounts pursuant to P.U.C. Substantive Rule §26.403), and the Order in Docket Number 18516 (the Small and Rural Incumbent Local Exchange Carrier (SRILEC) fund, which determined small company support amounts pursuant to P.U.C. Substantive Rule §26.404)?

3. Are the entities receiving TUSF spending the money for its intended purposes?

4. What measures could or should be taken to ensure that a telecommunications provider's support from TUSF for a geographic area is consistent with PURA §56.021 and the commission's Orders in Docket Numbers 18515 and 18516?

II. Prospective Evaluation of the Fund

A. General Issues

5. Should the TUSF continue, be phased out, or abolished?

6. Should the TUSF be brought within the state treasury? Please provide examples of other funds that have been brought within the state treasury.

7. What is the appropriate use of the money in the fund?

8. For what purposes should the money be used by the TUSF recipient?

9. How should recipients of TUSF money be held accountable for the use the money?

10. How useful is the attestation required by PURA §56.029(g)?

11. Identify the specific "policies provided by this title," as referenced in PURA §56.029(e), and discuss how each particular policy relates to the commission's review of the TUSF under PURA §56.029.

12. Going forward, what relationship should exist between the Provider of Last Resort (POLR) obligation and the TUSF?

B. Definitions

13. Should the definition of basic local telecommunications service be expanded or otherwise changed? In your response, please address the potential impact on the size of the fund for each new service that you recommend adding to the definition.

14. Going forward, how should "reasonable rates" be defined or determined?

15. Going forward, how should "high cost areas" be defined or determined?

C. Collection and Disbursement

16. How should the money in the TUSF be collected?

17. How should the money be disbursed?

a. Should providers that are not subject to the TUSF assessment be eligible to receive TUSF disbursements?

b. Should TUSF support be provided for wire centers in exchanges that have been deregulated pursuant to PURA Chapter 65?

18. Will the current funding mechanism be adequate in the future to sustain the purposes for which the fund was created, considering the development of new technologies not subject to the existing funding mechanism and the shift from state to federal jurisdiction?

19. Do you currently consider any Voice over Internet Protocol (VoIP) revenues to be intrastate taxable telecommunications receipts, and therefore pay into the TUSF on those receipts? If not, why not? In providing your answer, please cite to any applicable section of the Texas Tax Code, and federal or state rule, law and/or order.

III. Costing Issues

20. Please identify and rank, beginning with the most significant to the least significant, the top ten major cost drivers in the Hatfield (HAI) model used in Docket Number 18515. How have each of these major drivers changed over time? In providing your response, please include two rankings: (a) a list by order of magnitude of the most the significant cost drivers when the Order was issued in Docket Number 18515; and (b) a list by order of magnitude of the most the significant cost drivers today.

21. What cost model should be used to recalculate the THCUSP support amounts? Should the same cost model adopted at the federal level be used to calculate support amounts at the state level?

22. Should calculation of any high cost funds for which a provider would be eligible be based on the provider's specific costs, as opposed to the costs of the wireline incumbent? Should carrier-specific revenue benchmarks be considered in these calculations?

23. Should some method other than a cost model be used to determine the appropriate level of THCUSP support?

24. Should the SRILEC support amounts be recalculated? If so, how? If a cost model were adopted at the federal level, should that be used to calculate support amounts at the state level?

25. Please provide an analysis of the potential impact of a loss and/or reduction of TUSF support on rates for basic local telecommunications service in the THCUSP wire centers and SRILEC study areas. If projecting potential rate changes for basic local telecommunications service, please identify the formula used to calculate those rate changes.

26. Should carriers receiving support from the SRILEC fund be treated differently than those receiving support from the THCUSP? If so, how?

IV. Accounting/Data Issues

27. If a company does not specifically track investments and expenses used to satisfy the requirements of PURA §56.021, please provide comments regarding how the commission should satisfy the requirement specified in PURA §56.029(e)(2)(C), regarding accountability for use of the fund.

28. If no extant federal or state accounting rules exist that require a company to specifically track state and federal USF receipts and expenses, would your company support a process that would require such tracking?

29. If your company would support a process that requires tracking of federal and state USF receipts and a method for tracking those receipts to determine how they are used for USF expenses and investments, please describe a method your company believes would be sufficient for the commission and the Texas Legislature to determine the appropriate level of funding at a wire center level.

a. Which plant investment codes should be included and or excluded from any process?

b. Which expenses should be included or excluded for any such process?

c. If your company would not support a process that requires tracking of federal and state USF receipts and expenditures, please explain why your company does not support such a process.

Initial comments must be filed by Wednesday, March 1, 2006, and reply comments by Monday, April 3, 2006. Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All responses should reference Project Number 31863. The commission requests that parties identify the question for which a response is being provided, and respond to the questions in sequential order. The commission requests that responses be limited to 30 pages (including attachments).

Questions concerning this notice should be referred to Marshall Adair, Communications Industry Oversight Division at (512) 936-7214 or Rosemary McMahill, Communications Industry Oversight Division at (512) 936-7244. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200505606
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 5, 2005

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Request for Comments on Draft Rule Amendment and Questions Relating to the Amendment of P.U.C. Substantive Rule §25.478(a)

The Public Utility Commission of Texas (commission) is conducting a rulemaking relating to the amendment of P.U.C. Substantive Rule §25.478(a) regarding the waiver of deposits for victims of domestic violence and low-income elderly consumers.

The commission requests that interested persons file comments on the following questions and draft rule amendment within 32 days of the date of publication of this notice. The comments will be considered in preparing a proposed rule for publication pursuant to the Administrative Procedure Act. The questions and the draft rule amendment are available on the project website at http://www.puc.state.tx.us/rules/rulemake/31853/31853.cfm. Comments may be filed by submitting 16 copies to the commission's filing clerk, no later than Tuesday, January 17, 2006, at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711. All responses must reference Project Number 31853.

1. Please explain in detail any fiscal implications competitive Retail Electric Providers (REPs) expect from this amendment.

2. Please provide the number of deposits waived in 2003 and 2004 for victims of domestic violence. (Applies only to Affiliated REPs and Providers of Last Resorts (POLRs)).

3. Please provide the number of requests for deposit waivers by victims of domestic violence in 2003 and 2004 that were denied. Please provide a general description of reasons for their denial. (Applies only to Affiliated REPs and POLRs).

For more information on this project, please contact Annette Mass, Legal Division, (512) 936-7271 or annette.mass@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200505636

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 7, 2005

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Texas Residential Construction Commission

Workshop for Input on Amending 10 TAC Chapter 303, Subchapters A, B, and C and 10 TAC Chapter 313

The Texas Residential Construction Commission (commission) staff will hold a workshop to solicit input on amending rules regarding builder registration, the state-sponsored inspection and dispute resolution process (SIRP), and other agency rules regarding registration. The workshop will not include discussion of the commission rules on limited statutory warranties and performance standards. Comments received will be used to develop proposed rule amendments that will be submitted to the commission to consider for adoption. The workshop will be held at the commission offices in the Commission Hearing Room at the Texas Residential Construction Commission, 311 East 14th Street, Suite 200, Austin, Texas 78701. The hearing will begin at 10:00 a.m. on Thursday, December 15, 2005, and will conclude after the last registered speaker has had an opportunity to provide comments.

Persons wishing to attend the public hearing who require auxiliary aids, services or materials in an alternate format, please contact the Texas Residential Construction Commission at least five (5) working days prior to the meeting date. Phone: (512) 463-1040, FAX: (512) 463-9507, E-MAIL: dora.rivera@trcc.state.tx.us. TDD Relay Texas: 1-800-relay-VV (for voice), 1-800-TX (for TDD).

The commission is seeking specific comment on criteria by which to evaluate builder registration applications to satisfy the commission that the builder is honest, trustworthy and has integrity. The commission is also seeking specific comment on rule amendments to improve the flow of the SIRP process and improve the public's understanding of how the process works. In addition, the commission is seeking comment on improving the inspector and home registration rules so that those who are required to comply with those rules have a better understanding of the requirements. Notwithstanding the foregoing areas of specific concern, staff welcomes any constructive comments on the rules contained in 10 TAC Chapter 303, Subchapters A, B, and C and in 10 TAC Chapter 313, in order to improve the rules and the processes described in those rules.

Written comments on the builder, inspector and home registration rules and SIRP rules may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P. O. Box 13144, Austin, Texas 78711-3144 by December 23, 2005. Comments may be filed electronically at comments@trcc.state.tx.us. All responses should reference the RULES WORKSHOP in the subject line. Questions concerning this notice should be referred to Ms. Durso at (512) 475-0595 or susan.durso@trcc.state.tx.us.

TRD-200505575
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: December 2, 2005

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Stephen F. Austin State University

Notice of Consultant Contract Amendment

Stephen F. Austin State University, Nacogdoches, Texas, has amended a contract for creative services with AMS Production Group, 16986 N. Dallas Parkway, Dallas, Texas 75248.

The firm will provide consulting services in placing the University's existing television commercial during the 2005-2006 academic year.

The original contract was published in the September 3, 2004, issue of the *Texas Register* (29 TexReg 8688). The contract was renewed beginning November 15, 2005 and continuing through August 31, 2006, with a total consulting amount not to exceed $5,000.

No documents, films, recording, or reports of intangible results will be presented by the outside consultant. Services will be on an as needed basis.

For further information, contact Susan Hammons, Director of Public Affairs, Stephen F. Austin State University, P.O. Box 6100, SFA Station, Nacogdoches, TX 75962; email: hammonsms@sfasu.edu; fax (936) 468-1732; phone (936) 468-2041.

TRD-200505623
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: December 7, 2005

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Texas A&M University, Board of Regents

Request for Proposal

Texas A&M University seeks proposals from consulting firms to assess the existing state of purchasing services provided by the Department of Strategic Sourcing & Logistics and make recommendations regarding "best practices" with the intention of enhancing and improving the overall effectiveness and efficiency of the Department. The President of Texas A&M University has affirmed the necessity of these consulting services since comparative data and requisite skills and resources needed for an in-depth assessment are not available within The Texas A&M University System or any other known agency of the State of Texas.

Information may be obtained by contacting:

Paul Barzak, C.P.M.

Associate Director of Purchasing Services

Texas A&M University

P.O. Box 30013

College Station, Texas 77842-0013

or e-mail at pbarzak@tamu.edu

Selection criteria will include competence, experience, knowledge, qualification and reasonableness of price. Proposals must be received on or before 12:00 noon, December 19, 2005.

TRD-200505621
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: December 7, 2005

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Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Brownwood, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Brownwood, Brownwood Regional Airport. TxDOT CSJ No.:0623BWOOD. Scope: Provide engineering/design services to install PAPI-4 and REIL on Runway 35 at the Brownwood Regional Airport.

The DBE goal is set at **0%**. TxDOT Project Manager is Ed Mayle.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Brownwood Regional Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address **http://www.dot.state.tx.us/avn/avn550.doc**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Six (6) completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight January 19, 2006. Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on January 20, 2006. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. January 20, 2006. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff and local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **www.dot.state.tx.us/business/avnconsultinfo.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Ed Mayle, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200505638

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 7, 2005

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Aviation Division - Request for Proposal for Professional Services

The Aviation Division of the Texas Department of Transportation (TxDOT) intends to enter into one or two contracts with prime provider(s) pursuant to Government Code, Chapter 2254, Subchapter A, for geotechnical and quality assurance testing services and for resident project representation (RPR).

TxDOT CSJ No.:**06AVNSERV**

Project Description and Work to be Performed:

The Aviation Division of TxDOT intends to enter into one or two contracts with prime provider(s) to perform geotechnical investigation, quality assurance testing, and RPR services for various general aviation airport construction projects across the state. The construction general contractor performing services on these projects must provide their own independent quality control testing and is not a part of this proposal.

Projects requiring these services are typically designed by the Aviation Division and each usually have total construction costs of under $300,000. There are generally about 20 of these projects that require testing services each year, and 10 requiring RPR services.

Testing services may include, but are not limited to: asphaltic concrete, portland cement concrete, plant inspection and testing, soil exploration, and geotechnical testing.

RPR services include, but are not limited to: attend conferences, review schedules, review submittals, review work, reject defective work, inspections and tests, maintain records, submit weekly progress reports, approve payments, and conduct wage rates interviews.

The contracted firm will be required to provide on-demand testing and RPR services with 12 to 24 hours advance notification throughout the state.

Selection Requirements:

The proposing firm must demonstrate that a professional engineer registered in Texas will sign and seal the work to be performed under the contract. The proposing firm must demonstrate a familiarity with TxDOT and Federal Aviation Administration (FAA) materials and testing procedures. The proposing firm must also provide a short resume of proposed RPR candidates listing their experience in airport related construction.

Employment Law:

A prime provider or sub-provider currently employing former TxDOT employees must be aware of the revolving door employment laws, including Government Code, Chapter 572 and §2252.901.

Historically Underutilized Business (HUB) Goal/Disadvantaged Business Enterprise (DBE):

The assigned HUB/DBE goal for participation in the work to be performed under this contract will be race neutral. Services for HUB or DBE will be reported dependent upon the funding utilized for each project.

Selection Criteria:

TxDOT will evaluate proposals using the following criteria:

1) Project understanding and approach, including utilization of professional engineer services. 25 points.

2) The firm's experience with similar projects and ability to provide testing and RPR services. 25 points.

3) Ability to perform in a timely manner and provide on-demand services. 25 points.

4) Ability to understand and meet FAA requirements for specified material testing and provide competent RPR oversight. 25 points.

Selection Procedure:

The successful firm(s) will be selected on the basis of a proposal of no more than four (4) typed, 8-1/2 x 11 inch single sided pages, using no smaller than a 12 pitch font size. The proposal will systematically address the four criteria listed above and data provided below, and will be scored accordingly.

At a minimum, the proposal must include:

1) The RFP number.

2) The name of the firm, address and contact information.

3) The qualifications and experience of key staff, subcontractors and anyone assigned to oversee the work.

Contract Terms:

Each total contract, whether executed with one or two firms, shall not exceed **$250,000**. For each individual construction project, the selected firm will submit a proposed schedule and price for testing based on the project materials quantities provided by the TxDOT Aviation Project Manager for approval. TxDOT Project Manager may add or delete specific testing requirements based on the complexity and/or budget constraints of each individual project. RPR estimated hours will be provided by the TxDOT Aviation Project Manager based on the complexity and/or budget constraints of each individual construction project.

Compensation for individual projects shall be based on costs for required tests that are commensurate with industry standards, plus travel expenses, and per diem when appropriate. On occasion, if mutually beneficial, a lump sum fee for a project may be allowed. A testing schedule and not-to-exceed fee shall be negotiated prior to commencement of services for any project. Compensation for RPR is an hourly rate per hour. Such payment shall include all direct salary costs, indirect salary costs, fringe benefits, overhead, travel and subsistence, telephone and postage, field office expenses, printing and reproduction costs, any other payroll costs, and profit.

This contract shall be in effect for **24 months** after execution and can be extended by written amendment agreed to by both parties for an additional 24 months.

Deadline:

Five completed, unfolded copies of the proposal must be postmarked by U. S. Mail by midnight Tuesday, January 17, 2006. Mailing address is: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. Wednesday, January 18, 2006. Overnight address is: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. Wednesday, January 18, 2006. Hand delivery address is: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Please mark the envelope of the proposal to the attention of Amy Slaughter. Electronic facsimiles or email of the proposal will not be accepted.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager at 1-800-68-PILOT (74568). Please contact Bill Fuller, PE, Director of Engineering, for technical questions at 1-800-68-PILOT (74568).

TRD-200505637
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 7, 2005

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The University of Texas System

Notice on Entering into Major Consulting Services Contract

As The University of Texas Health Science Center at Houston (University) moves forward to provide the best health services, we must also consider our stewardship responsibilities of the Earth as we plan for the growth and evolution of the campus. A central focus of our research is the influence we effect upon the environment, as well as the effect the environment has on health and illnesses of individuals and communities. Sustainability can be defined as the "development that meets the needs of present generations without compromising the ability of future generations to meet their own needs." The concept of sustainability is based on principles of resource efficiency, health, and productivity. These principles require that we look at the way we conduct business on a full life cycle basis. Our goal is to return ownership of the goods, and hence, consequences and accountability back to the manufacturer. This "cradle to cradle" paradigm approach takes into consideration the total economic and environmental impacts as well as performance from materials, products, transportation, design and construction, operations and maintenance, building and product reuse, de-construction, or recycle.

The University is looking for a Proposer to provide the assistance the University requires to provide strategic planning, cultural integration, leadership, and executive communication and facilitation of collaboration discussions for the University's Department of Health Information Science.

The finding of fact required by §2254.028 of the *Texas Government Code* was made by The University of Texas Health Science Center at Houston President that the consulting services are necessary. While the University has a substantial need for the consulting services, the University does not currently have staff with expertise or experience with the consulting services; and the University cannot obtain such consulting services through a contract with another State government entity.

Unless the University receives a better offer, the University intends to award a contract for the consulting services solicited under this invitation to Cascade Consultation, a consultant that previously provided consulting services to the University.

The award for services will be made based on the best value criteria as follows:

- Firm experience

- Project team

- Project workplans

- Total cost

The individual to be contacted with an offer to provide such consulting services or to obtain a copy of the Invitation for Offers for the consulting services identified in this invitation is:

The University of Texas Health Science Center at Houston

Procurement Services

Attn: Marie S. Canty, C.T.P.

1851 Crosspoint, Suite 1.160

Houston, Texas 77054

Voice: (713) 500-4716 or (713) 500-4723

E-mail: Marie.S.Canty@uth.tmc.edu

The proposal submission deadline is January 16, 2006.

The Invitation for Offers may also be obtained at: http://buy.uth.tmc.edu/bid/

IFO 744-6002 Consultation Services - SHIS

TRD-200505617
Francie A. Frederick
Counsel and Secretary to the Board
The University of Texas System
Filed: December 6, 2005

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Workforce Resource Board

Workforce Investment Act (WIA) Providers of Training

Workforce Resource, Inc. and the Texas Workforce Commission are seeking training provider applicants for possible placement on the statewide list of approved training facilities in support of the Workforce Investment Act (WIA).

WIA conducts federal job training programs with a comprehensive workforce investment system to help Americans access tools they need to manage their careers through information and high quality services, and to help U.S. companies find skilled workers.

Workforce Resource is the administrative entity for WIA programs within the North Texas Workforce delivery area including: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young counties.

Eligible training providers are: post-secondary educational institutions, entities that carry out programs under the National Apprenticeship Act and, other public or private providers of a program of training services.

Obtain additional information by contacting Joe Winkcompleck at Workforce Resource, Inc., 901 Indiana Ave., Suite 180, Wichita Falls, Texas 76301. (940) 767-1432 Fax (940) 322-2683 or email at joe.winkcompleck@twc.state.tx.us.

TRD-200505602
Mona Williams Statser
Executive Director
Workforce Resource Board
Filed: December 5, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).